

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part VI: Historical records and records in Public Record Office or Public Record Office of Northern Ireland

Section 62: Interpretation of Part VI

200. This section defines the expression “historical record” for the purpose of this Part of the Act. A historical record is a record which is thirty years old, counting from the calendar year following that in which it was created. Where records are kept in a file, the thirty years (and the other periods of years mentioned in section 63) are reckoned from the calendar year following that in which the most recent was created.

Section 63: Removal of exemptions: historical records generally

201. The effect of this section is to disapply some of the exemptions in Part II of the Act in the case of information contained in a historical record, and therefore to extend the scope of the right of access in section 1 in these cases. The exemptions which are disapplied are those relating to:
- relations within the United Kingdom (section 28);
 - criminal investigations and proceedings (section 30(1));
 - court records, etc (section 32);
 - audit functions (section 33);
 - formulation of government policy etc (section 35);
 - prejudice to effective conduct of public affairs (section 36);
 - communications with Her Majesty etc (section 37(1)(a));
 - legal professional privilege (section 42); and
 - commercial interests (section 43).
202. In addition, the exemption relating to honours (section 37(1)(b)) is disapplied in respect of information contained in a record which is 60 years old, and the law enforcement exemption (section 31) is disapplied in respect of information contained in a record which is one hundred years old.

Section 64: Removal of exemptions: historical records in public record offices

203. This section makes further disapplication of exemptions in Part II of the Act in the case of information contained in a historical record, but only where the record is held by the Public Record Office. (The Public Record Office is a government department and so,

by virtue of paragraph 1 of Schedule 1, a public authority for the purposes of the Act.) Corresponding provision for Northern Ireland is included.

204. Under *subsection (1)*, the exemption for information accessible to the public by other means does not apply in these cases. This is despite the fact that the Keeper of Public Records will continue to be under an obligation under section 5(3) of the Public Records Act 1958 to arrange reasonable facilities for public inspection and copies *as well as* complying with the duties under the Act. Nor does the exemption for information intended for future publication apply.
205. *Subsection (2)* provides that, where information is held in a historical record in the Public Record Office, although the exemption relating to information supplied by, or relating to the work of, bodies dealing with national security matters will continue to apply, it will not be considered to be an absolute exemption for the purposes of section 2.

Section 65: Decisions as to refusal of discretionary disclosure of historical records

206. This section applies where a public authority holds information contained in a historical record which is *also* a “public record” as defined by the Public Records Act 1958, and where that information is exempt information by virtue of a provision in Part II not specified as conferring absolute exemption in section 2(3). Section 65 provides that where the authority is minded to refuse a request for that information, it must consult the Lord Chancellor before doing so. Corresponding provision for Northern Ireland is included. *Subsection (2)* disapplies this section to information to which clause 66 applies.

Section 66: Decisions relating to certain transferred public records

207. This section applies to information in a transferred public record which has not been designated by the responsible authority as open information for the purposes of this section. Section 66 provides that, before deciding whether any exemption applies in respect of the duty to confirm or deny, or the duty to disclose, the appropriate records authority (for example, the Public Record Office) must consult the responsible authority (which will generally be the authority who transferred the record to it).
208. *Subsections (3) and (4)* provide that if the duty to confirm or deny, or the duty to disclose, does not arise, as a result of an exemption not specified in section 2 as conferring absolute exemption, then it will be for the responsible authority, not the public records authority, to make the public interest decisions regarding the duty to confirm or deny and disclosure. This is because it is the responsible authority which has the knowledge and expertise to enable them to make such decisions.
209. *Subsection (5)* provides that the responsible authority must consult with the Lord Chancellor before determining that the public interest does not require disclosure. In the case of public records to which the Public Records Act (Northern Ireland) 1923 applies, consultation must be with the appropriate Northern Ireland Minister.
210. *Subsection (6)* provides that if the responsible authority is not a public authority within the scope of the Act, then it will be treated as a public authority for the purposes of Parts III, IV and V of the Act, so far as relating to the duty in section 15(3) and the imposition of any requirement to provide information to which this section applies.

Section 67: Amendments of public records legislation

211. This section introduces Schedule 5 which amends the Public Records Act 1958 to make provision consequential on the application of the Act to the Public Record Office and to create a power to extend the meaning of public records for the purposes of the 1958 Act.