

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedules

Schedule 1: Public authorities

250. This Schedule lists “public authorities” for the purposes of the Act. Government departments, the Houses of Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the armed forces, local government bodies, National Health Service bodies, schools, colleges and universities, police authorities and Chief Officers of Police and other public bodies and offices are all specified as public authorities. Further persons, bodies or office holders may be designated by order under sections 4 and 5.

Schedule 2: The Commissioner and the Tribunal

Part I: Provision consequential on section 18(1) and (2)

251. Part I makes provision required as a consequence of the renaming of the Data Protection Commissioner and Data Protection Tribunal. *Paragraphs 1* and *2* make general provision in connection with the changing of the names of the Commissioner and the Tribunal. Specific amendments are made to:
- Public Records Act 1958
 - Parliamentary Commissioner Act 1967
 - Superannuation Act 1972
 - Consumer Credit Act 1974
 - House of Commons Disqualification Act 1975
 - Northern Ireland Assembly Disqualification Act 1975
 - Tribunals and Inquiries Act 1992
 - Judicial Pensions and Retirement Act 1993
 - Data Protection Act 1998

Part II: Amendments relating to extension of functions of Commissioner and Tribunal

252. This Part makes minor substantive amendments to the institutional provisions of the Data Protection Act 1998.

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

253. *Paragraph 16* amends section 6 of the 1998 Act to require lay members of the Tribunal to include persons representing applicants for information under this Act and persons to represent the interests of public authorities.
254. *Paragraph 17* amends section 26(2) of the 1998 Act to ensure that in prescribing notification fees the Secretary of State is to have regard to the expenses of the Commissioner and Tribunal under the 1998 Act only, and not their expenses under this Act.
255. *Paragraph 18* amends section 58 of the 1998 Act to provide that information may be passed to the Commissioner or Tribunal to allow them to discharge their freedom of information functions.
256. *Paragraph 19* amends section 59 of the 1998 Act to provide that the duty of confidentiality on the Commissioner, his staff and agents and the related offence under the 1998 Act apply also in respect of information obtained by or furnished to the Commissioner under this Act.
257. *Paragraph 20* amends Schedule 5 to the 1998 Act to allow the Commissioner to appoint a second deputy commissioner and states that, if two are appointed, the Commissioner should specify the functions of each.
258. *Paragraph 21* amends Schedule 5 to the 1998 Act to enable both deputy commissioners to perform the functions of the Commissioner in relation to freedom of information as well as data protection in the event of a vacancy in the Commissioner post or when the Commissioner is unable to act.
259. *Paragraph 22* amends paragraph 9(1) of Schedule 5 to the 1998 Act to provide that the Commissioner's funding regime, set up in respect of his functions under the Data Protection Act 1998 and consumer credit legislation, applies also in respect of his freedom of information functions.

Schedule 3: Powers of entry and inspection

260. This Schedule sets out the circumstances in which, where he suspects a contravention of the Act, the Commissioner may seek a warrant enabling him to enter and search premises and seize material. The powers are comparable to the ones available to him under Schedule 9 to the Data Protection Act 1998.

Issue of Warrants

261. *Paragraph 1(1)* allows a circuit judge to issue a warrant to the Commissioner where the judge is satisfied by information from the Commissioner on oath that there are reasonable grounds for suspecting either that the public authority has failed or is failing to comply with any of the requirements of Part I of the Act, so much of a decision notice as requires steps to be taken, or an information notice or enforcement notice, or that an offence under section 77 has been or is being committed. The judge must also be satisfied that evidence of the failure or of the offence is to be found on the premises specified.
262. *Paragraph 1(2)* sets out the action that may be taken under the warrant. The Commissioner or his officers or staff may, within seven days, enter and search the premises in question and inspect, examine, operate and test any relevant equipment. They may inspect and seize any documents or other material which may be evidence of the alleged contravention or offence.
263. *Paragraph 2(1)* sets out further conditions for the issue of a warrant. The judge must be satisfied that:
 - a) the Commissioner has given seven days' notice in writing to the occupier of the premises demanding access;

- b) access was demanded at a reasonable hour and was unreasonably refused; or, if entry was granted, the occupier refused unreasonably to comply with a request; and
 - c) the occupier has been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by the judge.
264. *Paragraph 2(2)* says that the above conditions do not apply if the judge is satisfied that the case is one of urgency, or that meeting the conditions would defeat the purpose for which the warrant is being sought.
265. *Paragraph 3* requires the judge to issue not only the warrant but also two certified copies of it.

Execution of warrants

266. *Paragraph 4* allows necessary, reasonable force to be used in executing a warrant.
267. *Paragraph 5* requires the warrant to be executed at a reasonable hour unless there are grounds for suspecting that doing so would mean that the evidence would not be found.
268. *Paragraph 6* requires the person occupying the premises to be shown and given a copy of the warrant if he is present when it is executed. If the occupier is not present, a copy of the warrant must be left prominently on the premises.
269. *Paragraph 7* requires a receipt to be given, if sought, for anything seized. It also provides for anything seized to be retained as long as is necessary. The person occupying the premises must be given a copy of anything that is seized if he asks for it and if this can be done without undue delay.

Matters exempt from inspection and seizure

270. *Paragraph 8* exempts from the powers conferred by a warrant information which is exempt from any of the Act's provisions by virtue of sections 23(1) or 24(1) (the exemptions relating to national security).
271. *Paragraph 9(1)* prohibits the exercise of the power authorised by a warrant in respect of any communication between a professional legal adviser and his client in connection with the client's obligations, liabilities or rights under the Act, or other specified communications relating to proceedings or possible proceedings under the Act. These include proceedings before the Tribunal.
272. *Paragraph 9(2)* makes clear that the prohibition in paragraph 9(1) also applies to copies or other records of such communications, and anything enclosed with or referred to in any such communication, if the communication is made in connection with the giving of such advice or in relation to such proceedings as are mentioned.
273. *Paragraph 9(3)* provides that paragraph 9 does not apply to anything in the possession of any person other than the professional legal adviser or his client, or to anything held with the intention of furthering a criminal purpose.
274. *Paragraph 9(4)* provides that references in paragraph 9 to the client of a professional legal adviser include references to any person who may be representing the client.
275. *Paragraph 10* deals with the situation in which material consists partly of matters covered by the warrant and partly of matters not covered by the warrant. In such a case, if the person executing the warrant requests him to do so, the occupier of the premises must provide a copy of so much of the material as is covered by the warrant.

Return of warrants

276. *Paragraph 11* requires warrants to be returned to the issuing court whether or not they have been executed. The warrant must contain an endorsement by the relevant person of the powers which have been exercised under it.

Offences

277. *Paragraph 12* makes it an offence for a person intentionally to obstruct another in the execution of a warrant, or to fail without reasonable excuse to give the person executing a warrant such assistance as he may reasonably require.

Vessels, vehicles etc

278. *Paragraph 13* defines “premises” for the purpose of the Schedule as including vessels, vehicles, aircraft or hovercraft. References to occupiers of premises include references to the people in charge of the vessels etc.

Scotland and Northern Ireland

279. *Paragraph 14* provides for the interpretation of the Schedule in Scotland according to the procedures and terminology which apply there.
280. *Paragraph 15* makes similar provision for Northern Ireland.

Schedule 4: Appeal Proceedings – Amendments of Schedule 6 to Data Protection Act 1998

Constitution of Tribunal in national security cases

281. *Paragraph 1* amends paragraph 2(1) of Schedule 6 to the Data Protection Act 1998 to enable the Lord Chancellor to designate, from the chairmen and deputy chairmen of the Tribunal, those who can hear appeals in national security cases under section 60(1) or (4) of this Act.
282. *Paragraph 2* amends paragraph 3 of Schedule 6 to the Data Protection Act 1998 to provide that in appeals in national security cases the Tribunal shall consist of three members designated under paragraph 2(1), of whom the Lord Chancellor is to designate one to preside.

Constitution of Tribunal in other cases

283. *Paragraph 3* amends paragraph 4 of Schedule 6 to the Data Protection Act 1998 to provide for the constitution of the Tribunal in other than national security cases to be similar to that for data protection, that is, it shall consist of a chairman or deputy chairman (who shall preside) and an equal number of members appointed respectively to represent the interests of applicants for information and public authorities under the Act (see section 6(6) of the 1998 Act, as amended by paragraph 16 of Schedule 2 to the Freedom of Information Act).

Rules of procedure

284. *Paragraph 4* amends the provision conferring power to make rules of procedure for the Tribunal so that the rules may extend to appeals under sections 57(1) and (2) and 60(1) and (4) of the Freedom of Information Act.

Schedule 5: Amendments of public records legislation

Functions of the Advisory Council on Public Records

285. *Paragraph 1* inserts a new provision into the Public Records Act 1958 which extends the role of the Lord Chancellor's Advisory Council on Public Records to include the giving of advice on matters relating to the application of the Freedom of Information Act to information contained in public records which are also historical records under Part VI of the Act.

Access to Public Records

286. *Paragraphs 2 and 3* amend the Public Records Act 1958 with the effect of preserving the duty of the Keeper of Public Records to arrange reasonable facilities for the inspection of records which are held in the Public Record Office (and other appointed places of deposit) and which are subject to disclosure under the provisions of the Act, but otherwise to repeal the provisions of the 1958 Act relating to access to such records. The provision which had been made by section 5 of that Act had established a regime for access to and closure of records largely based on the discretion of the Lord Chancellor. That discretionary provision is superseded by the statutory regime for access which is established by sections 1 and 2 of the Act and which is subject to the exemptions in Part II of the Act. The provision made by sections 65 and 66 retains some of the 1958 Act's elements of consultation and consent as between the Public Record Office or Lord Chancellor on the one hand, and public authorities on the other, in the case of such disclosure of information as continues under the Act's regime to be discretionary. *Paragraph 5* makes provision for Northern Ireland corresponding to that made by paragraph 2(3).

Power to extend the meaning of 'public records'

287. *Paragraph 4* inserts a new paragraph 3A in Schedule 1 of the Public Records Act 1958. This enables further bodies to be added to the Table in paragraph 3 of that Schedule by Order in Council. Any new entry must relate to a body which is specified in Schedule 2 to the Parliamentary Commissioner Act 1967 or could be added to that Schedule. An Order in Council under this new power is subject to negative resolution procedure (unlike orders under the wider power in the existing paragraph 7, which are subject to affirmative resolution).

Schedule 6: Further amendments of Data Protection Act 1998

288. *Paragraph 1* makes a drafting amendment of subsection (3) of section 7 of the 1998 Act, so that the wording of that subsection is consistent with that of the equivalent provision in section 1(3) of this Act.
289. *Paragraph 2* inserts a new section 35A into the 1998 Act conferring exemptions from certain provisions of the 1998 Act where required to avoid infringing parliamentary privilege.
290. *Paragraph 3* inserts a new section 63A into the 1998 Act providing that the provisions of the 1998 Act shall apply to personal data processed by or on behalf of either House of Parliament, designating the data controllers for each House and providing an exemption from prosecution under the Act to the designated data controllers. Similar provision is unnecessary for the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly as the Data Protection Act 1998 already applies to them.
291. *Paragraphs 4 and 5* amend Schedules 2 and 3 to the 1998 Act. Those Schedules set out conditions which apply to the processing of personal data and sensitive personal data respectively, and one of which must be met in order to comply with the first data protection principle. The amendments have the effect that processing necessary for the

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

exercise of any functions of Parliament will satisfy the requirements of Schedule 2 and 3 to the 1998 Act.

292. *Paragraph 6* amends the exemption relating to honours in paragraph 3(b) of Schedule 7 to the 1998 Act so as to add a reference to a dignity. The award of peerage may be regarded as a dignity rather than an honour.
293. *Paragraph 7* amends the reference in paragraph 10 of Schedule 7 to the 1998 Act to the Scottish equivalent of legal professional privilege.
294. *Paragraph 8* amends paragraph 2(1) of Schedule 14 to the 1998 Act to provide that the transitional exemption from notification for those data controllers already registered under the Data Protection Act 1984 at the time when Part III of the 1998 Act is brought into force is to extend until the normal date of expiry of their registered entry.

Schedule 7: Disclosure of information by ombudsmen

295. This Schedule provides for amendments to the relevant legislation which relate to information disclosed to specified ombudsmen and provides that they are empowered to disclose on a similar basis to that provided for by section 76 to the Information Commissioner. There is no provision for the three Scottish ombudsmen to disclose to the Commissioner, as any such amendments to the legislation relating to the Scottish ombudsmen would be a matter for the Scottish Parliament.

Schedule 8: Repeals

296. This Schedule contains details of repeals.