

2004 No. 3089 (S.10)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

FREEDOM OF INFORMATION

**The Freedom of Information (Scotland) Act 2002
(Consequential Modifications) Order 2004**

Made - - - - - *19th November 2004*

Coming into force - - - - - *1st January 2005*

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998(a);

Now, therefore, the Secretary of State in exercise of the powers conferred upon him by sections 104, 112(1) and 113 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 and shall come into force on 1st January 2005.

Data Protection Act 1998

2.—(1) The Data Protection Act 1998(b) is amended as follows.

(2) In section 1 (basic interpretative provisions)—

(a) in subsection (1)(c), for the definition of “public authority” substitute—

““public authority” means a public authority as defined by the Freedom of Information Act 2000(d) or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002(e);”;

(b) in subsection (5)(f), at the end add “or section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002”; and

(a) 1998 c.46.

(b) 1998 c.29.

(c) Subsection (1) was amended by the insertion of the definition of “public authority” by the Freedom of Information Act 2000 (c.36), section 68(2).

(d) 2000 c.36.

(e) 2002 asp 13.

(f) Subsection (5) was inserted by the Freedom of Information Act 2000 (c.36), section 68(3).

(c) in subsection (6)(a) the existing words “section 7 of the Freedom of Information Act 2000 prevents Parts 1 to 5 of that Act” become paragraph (a) and after that paragraph insert the word “or” and the following paragraph:–

“(b) section 7(1) of the Freedom of Information (Scotland) Act 2002 prevents that Act.”.

Freedom of Information Act 2000

3.—(1) The Freedom of Information Act 2000, is amended as follows.

(2) After section 76, insert–

“Disclosure between Commissioner and Scottish Information Commissioner

76A. The Commissioner may disclose to the Scottish Information Commissioner any information obtained or furnished as mentioned in section 76(1) of this Act if it appears to the Commissioner that the information is of the same type that could be obtained by, or furnished to, the Scottish Information Commissioner under or for the purposes of the Freedom of Information (Scotland) Act 2002.”.

(3) In section 80, after subsection (2), add–

“(3) Section 50 of the Copyright, Designs and Patents Act 1988(b) and paragraph 6 of Schedule 1 to the Copyright and Rights in Databases Regulations 1997(c) apply in relation to the Freedom of Information (Scotland) Act 2002 as they apply in relation to this Act.”.

ANNE McGUIRE
Parliamentary Under Secretary of State
Scotland Office
Department for Constitutional Affairs

Dover House,
London
19th November 2004

(a) Subsection (6) was inserted by the Freedom of Information Act 2000 (c.36), section 68(3).
(b) 1988 c.48.
(c) S.I. 1997/3032.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Data Protection Act 1998 (“the DPA”) and the Freedom of Information Act 2000 (“the FOIA”) in consequence of the enactment of the Freedom of Information (Scotland) Act 2002 (“the FOISA”).

Article 2 amends section 1 of the DPA to extend the amendments to that Act made by section 68(2) and (3) of the FOIA so that the relationship between the DPA and the FOISA mirrors that between the DPA and the FOIA in that respect. In that article:

- (a) paragraph (2)(a) substitutes a new definition of “public authority” in section 1(1) of the DPA which includes both a “public authority” as defined by the FOIA and a “Scottish public authority” as defined by the FOISA;
- (b) paragraph (2)(b) amends section 1(5) of the DPA to the effect that “held” (in relation to information being held by a public authority) shall be construed in accordance with the relevant provisions of the FOIA or section 3(2), (4) and (5) of the FOISA; and
- (c) paragraph (2)(c) amends section 1(6) of the DPA to provide that where the provisions of the FOISA are prevented from applying to certain information held by a public authority by virtue of section 7(1) of that Act, such information is not to be treated as held by the public authority for the purposes of paragraph (e) of the definition of “data” in section 1(1) of the DPA.

Article 3 amends the FOIA as follows:

- (a) paragraph (2) adds a new section 76A to permit the UK Information Commissioner to share certain information with the Scottish Information Commissioner (reciprocal provisions are contained in section 63 of the FOISA); and
- (b) paragraph (3) adds a new subsection (3) to section 80 to extend the application of section 50 of the Copyright, Designs and Patents Act 1988 to the FOISA as it applies to the FOIA.

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