

**EXPLANATORY MEMORANDUM TO THE
FREEDOM OF INFORMATION (REMOVAL AND RELAXATION OF
STATUTORY PROHIBITIONS ON DISCLOSURE) ORDER 2004**

2004 No. [xxxx]

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by the Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1. This instrument amends seven enactments containing prohibitions on the disclosure of information which would be capable of frustrating a request for information made under section 1 of the Freedom of Information Act 2000. One prohibition on disclosure is repealed entirely.
- 2.2. Public authorities subject to both the Freedom of Information Act and the enactments affected by this Order (with the exception of the Audit Commission Act 1998) will no longer have to consider the affected enactments when deciding whether or not information can be released. (Other exemptions under the Freedom of Information may still apply.) This will ease the practical operation of the Freedom of Information Act 2000.

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

- 3.1. None.

4. **Legislative Background**

- 4.1. This instrument is made to smooth the operation of the Freedom of Information Act 2000, and to bring more information into the public domain.
- 4.2. This instrument is the first use of the power in section 75 of the Freedom of Information Act 2000 to repeal or amend existing legislation containing prohibitions on the disclosure of information.
- 4.3. This instrument amends the following enactments, all of which place a general prohibition on the disclosure of information:
 - Factories Act 1961, section 154
 - Offices, Shops and Railway Premises Act 1963, section 59
 - Health and Safety at Work etc. Act 1974, section 28
 - Medicines Act 1968, section 118
 - National Health Service Act 1977, Schedule 11 paragraph 5
 - Audit Commission Act 1998, section 49

Access to Justice Act 1999, section 20

4.4. The Biological Standards Act 1975, section 5 is repealed.

5. Extent

5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1. Baroness Ashton has made the following statement regarding Human Rights: “In my view, the provisions of the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure) Order 2004 are compatible with the Convention rights.”

7. Policy Background

7.1. The Freedom of Information Act 2000 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 of the description specified in the request, and (b) if that is the case, to have that information communicated to him (section 1(1)).

7.2. Section 44 of the Freedom of Information Act provides that information is exempt from the duty to disclose under section 1 if that disclosure is prohibited by another enactment.

7.3. Section 75 of the Freedom of Information Act empowers the Secretary of State to repeal or amend any enactments capable of prohibiting disclosure in this way. The eight provisions named in this Order fall within this description.

7.4. Eight enactments are affected by this Order:

Factories Act 1961, section 154

Offices, Shops and Railways Premises Act 1963, section 59

Medicines Act 1968, section 118

National Health Service Act 1977, Schedule 11 paragraph 5

These provisions presently contain a blanket ban on any disclosure. They will be amended to remove the ban entirely insofar as it applies to public authorities subject to the Freedom of Information Act.

Health and Safety at Work etc. Act 1974, section 28

This provision presently places a general prohibition on the disclosure of ‘relevant information’, whilst making particular provision permitting disclosure in given circumstances. These circumstances will be expanded to include disclosure by a public authority subject to the Freedom of Information Act.

A further blanket ban on disclosure within this section will be removed insofar as it applies to public authorities subject to the Freedom of Information Act.

Audit Commission Act 1998, section 49

This provision presently places a general prohibition on the disclosure of information, whilst making particular provision permitting disclosure in given circumstances. Disclosure contrary to the existing provision is a criminal offence punishable by imprisonment. As above, this provision will be amended to make separate provision for disclosure by public authorities subject to the Freedom of Information Act, and will permit disclosure except where to do so would prejudice the effective performance of their statutory functions. Disclosure contrary to this new provision will be a criminal offence punishable by a fine. (This is not creating a new criminal offence, but is rather relaxing the previous offence provision in relation to disclosure by public authorities that are not authorised by the new section 49A.)

Access to Justice Act 1999, section 20

This provision places a blanket ban on disclosure of information. It will be amended to include a clause, which will disapply the prohibition in relation to information over 100 years old. Once the information reaches this age, its disclosure will be governed by normal Freedom of Information rules and exemptions.

Biological Standards Act 1975, section 5

This provision presently places a blanket prohibition on disclosure. It will be repealed, as it applies only to public authorities subject to the Freedom of Information Act.

- 7.5. The main prohibition on disclosure in the Audit Commission Act 1998, section 49 is only relaxed, not entirely removed, by this instrument. Public authorities will therefore still have to consider both Acts, although the presumption is now in favour of disclosure rather than prohibition.
- 7.6. A large quantity of other primary and secondary legislation refers back to the provisions of the Health and Safety at Work etc. Act 1974. The amendments made in this Order will also affect this other legislation.
- 7.7. The government departments with responsibility for the legislation affected by this Order have been consulted and are content with its effects. Other affected parties including the Audit Commission and the Medicines and Healthcare Regulatory Agency have also been consulted and are content.
- 7.8. The Department for Constitutional Affairs has been reviewing other statutory prohibitions on disclosure of information for some time. Previous reports of the review published by the department have received some positive media attention.
- 7.9. The Order will come into force on 1 January 2005.

8. Impact

- 8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2. The impact on public authorities subject to the Freedom of Information Act will be to simplify the decision-making process in answering requests for information by reducing the number of enactments which must be considered.

9. Contact

Charlotte Mercer, Information Rights Division, Department for Constitutional Affairs can answer any queries relating to this instrument.

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