

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 5 – Historical records

Section 57 – The expression “historical record”

141. This section defines, for the purpose of this Part of the Act, the expression “historical record” as a record which is 30 years old, counting from the calendar year following that in which it was created. Where records are kept in a file, the period of 30 years (and any other period defined in section 58) is reckoned from the calendar year following that in which the most recent record was created.

Section 58 – Falling away of exemptions with time

142. The effect of this section is to disapply some of the exemptions in Part 2 in the case of information contained in a historical record, thereby extending the scope of the right of access in section 1 in these cases. Information contained in a file in which the most recent record is 30 years old or more cannot be exempt under the following sections:
- section 28 (relations within the United Kingdom)
 - section 29 (formulation of Scottish Administration policy etc.)
 - section 30 (prejudice to the effective conduct of public affairs)
 - section 33(1) (commercial interests)
 - section 36 (confidentiality)
 - section 37 (court records, etc.)
 - section 40 (audit functions) and
 - section 41(a) (communications with Her Majesty)
143. The exemption for information relating to honours (section 41(b)) is disappplied at the end of 60 years commencing at the beginning of the calendar year following that in which the record containing the information is created. The exemptions for information relating to sections 34(2)(b) (investigations into the cause of death), 35 (law enforcement) and 38(1)(c) or (d) (certain personal information) fall away after 100 years, on the same basis.
144. All other exemptions continue to apply in perpetuity.

Section 59 – Power to vary periods in sections 57 and 58

145. This section allows the Scottish Ministers to vary, by order, the period in section 57(1) after which a record becomes a historical record, or the periods in section 58(2) – but the period as varied can never exceed the period mentioned in these sections as originally enacted. An order under this section will be subject to affirmative resolution.