

*Draft Order laid before the Scottish Parliament under section 72(2)(b) of the Freedom of Information (Scotland) Act 2002, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

**FREEDOM OF INFORMATION**

**The Freedom of Information (Scotland)  
Act 2002 (Historical Periods) Order 2013**

*Made* - - - - *2013*  
*Coming into force* - - *1st April 2014*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 59(1) to (1C) of the Freedom of Information (Scotland) Act 2002<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 72(2)(b) of that Act<sup>(2)</sup> a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 and comes into force on 1st April 2014.

**Meaning of “historical record”**

2. In section 57 of the Freedom of Information (Scotland) Act 2002, for subsection (1) substitute—

“(1) For the purposes of this Part, a record becomes a “historical record” in accordance with subsections (1A) to (1C).

(1A) A record becomes one at the end of the period of 15 years beginning with 1st January in the calendar year following the date on which the record is created.

(1B) A record containing information which would be exempt by virtue of section 36 becomes one at the end of the period of 30 years beginning with 1st January in the calendar year following the date on which the record is created.

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(1) [2002 asp 13](#); section 59(1) was amended by section 4 of the Freedom of Information (Amendment) (Scotland) Act 2013 ([asp 2](#)) (“the Act”); section 59(1A) to (1C) was inserted by section 4 of the Act.  
(2) Section 72(2)(b) was amended by section 4 of the Act and has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)).

(1C) A record containing information which would be exempt by virtue of section 41(a) becomes one at the end of the later-ending of—

- (a) the period of 20 years beginning with the date on which the record is created;
- (b) the period of 5 years beginning with—
  - (i) in relation to communications with Her Majesty, the date of the death of Her Majesty,
  - (ii) in relation to communications with another member of the Royal Family, the date of the death of that member,
  - (iii) in relation to communications with the Royal Household, the date of the death of the Sovereign reigning when the record is created.

(1D) In the application of subsections (1A) to (1C)—

- (a) the general rule in subsection (1A) is subject to the operation of subsections (1B) and (1C) so far as relevant;
- (b) a record to which both subsections (1B) and (1C) relate becomes a historical record at the end of the later-ending of—
  - (i) the period provided for in subsection (1B),
  - (ii) the period provided for in subsection (1C)(b).”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends section 57(1) of the Freedom of Information (Scotland) 2002 Act (“the Act”) to make alterations to the definition of when a record containing information becomes a historical record for the purposes of that Act.

Following the amendment of the order-making power in section 59 of the Act by the Freedom of Information (Amendment) (Scotland) Act 2013, the Scottish Ministers may make different provision for records of different descriptions, exemptions of different kinds and different purposes in other respects when using that power to amend section 57(1) of the Act.

The general definition of when a record becomes a historical record for the purposes of the Act is amended from 30 to 15 years.

Records which contain information which would be exempt under section 36 of the Act become a historical record 30 years after the beginning of the year when the record was created.

Records which contain communications with her Majesty, a member of the Royal Family or the Royal Household become historical records either 5 years after the death of the person or 20 years after the date when the record was created (whichever is later).

The amendments regarding communications with her Majesty, the Royal Family or the Royal Household mirror amendments made to the Freedom of Information Act 2000 by the Constitutional Reform and Governance Act 2010.