

*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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**2008 No.**

**FREEDOM OF INFORMATION**

The Freedom of Information (Relaxation  
of Statutory Prohibitions on Disclosure  
of Information) (Scotland) Order 2008

*Made* - - - - 2008

*Coming into force* - - 13th October 2008

The Scottish Ministers make the following Order in exercise of the powers conferred by section 64(1) and (3) of the Freedom of Information (Scotland) Act 2002<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 64(1) of that Act, it appears to the Scottish Ministers that by virtue of section 26(a) of the Act, the enactments amended by this Order are capable of preventing the disclosure of information under section 1 of the Act.

In accordance with section 72(2)(b) of that Act, a draft of this Order 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 (Relaxation of Statutory Prohibitions on Disclosure of Information) (Scotland) Order 2008 and comes into force on 13th October 2008.

**Factories Act 1961**

2. In paragraph (a) of section 154A of the Factories Act 1961<sup>(2)</sup> (exception to the prohibition: public authorities) after “the Freedom of Information Act 2000” insert “or a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002”.

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(1) 2002 asp 13.

(2) 1961 c. 34. Section 154A was inserted by article 2 of S.I.2004/3363.

### Offices, Shops and Railway Premises Act 1963

3. In paragraph (a) of section 59A of the Offices, Shops and Railway Premises Act 1963(3) (exception to restriction: public authorities) after “the Freedom of Information Act 2000” insert “or a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002”.

### Medicines Act 1968

4. In paragraph (a) of section 118(1A) of the Medicines Act 1968(4) (restrictions on disclosure of information) after “the Freedom of Information Act 2000” insert “or a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002”.

### Health and Safety at Work etc. Act 1974

5.—(1) Section 28 of the Health and Safety at Work etc. Act 1974(5) (restrictions on disclosure of information) is amended as follows.

(2) In paragraph (f)(i) of subsection (3) after “the Freedom of Information Act 2000” insert “or a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002”.

(3) In paragraph (a) of subsection (9A) after “the Freedom of Information Act 2000” insert “or a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002”.

### Diseases of Fish Act 1983

6. After paragraph (d) of section 9(1) of the Diseases of Fish Act 1983(6) (disclosure of information) insert—

“(e) where—

(i) the person making the disclosure is, or is acting on behalf of a person who is, a Scottish public authority for the purposes of the Freedom of Information (Scotland) Act 2002, and

(ii) the information is not held by the authority on behalf of another person.”

St Andrew’s House, Edinburgh  
2008

Authorised to sign by the Scottish Ministers

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(3) 1963 c. 41. Section 59A was inserted by article 3 of S.I. 2004/3363.

(4) 1968 c. 67. Section 118(1A) was inserted by article 4 of S.I. 2004/3363.

(5) 1974 c. 37. Subsection (1) of section 28 was amended by section 36 of, and Schedule 3 to, the Consumer Protection Act 1987 (c. 43) and section 105(2) of the Railways and Transport Safety Act 2003 (c. 20). Subsection (3)(a) was amended by section 120 of, and paragraph 30(6)(a) of Schedule 22 to, the Environment Act 1995 (c. 25). Subsection (3)(c) was amended by section 120 of, and paragraph 30(6)(b) of Schedule 22, and Schedule 24 to, the Environment Act 1995. Subsection (3)(c)(ii) was amended, in relation to England and Wales, by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989 (c. 15), and in relation to Scotland, by section 120 of, and paragraph 30(6)(c) of Schedule 22 to, the Environment Act 1995 and by article 2 of, and paragraph 8(a) of the Schedule to, S.I. 2004/1822. Subsection (3)(c)(iii) was repealed by section 120 of, and paragraph 30(6)(d) of Schedule 22, and Schedule 24 to, the Environment Act 1995. Subsection 3(f) was inserted by article 5(2) of S.I. 2004/3363. Subsection 4 was amended by section 120 of, and paragraph 30(6)(e) of Schedule 22 of the Environment Act 1995. Subsection 5 was amended by article 5(3) of S.I. 2004/3363. Subsection (5)(a) was amended by section 120 of, and paragraph 30(6)(f)(i) of Schedule 22 to, the Environment Act 1995. Subsection (5)(b) was amended, in relation to Scotland, by article 2 of, and paragraph 8(b) of the Schedule to, S.I. 2004/1822 and by section 120 of, and paragraph 30(6)(f)(ii) and (iii) of Schedule 22, and Schedule 24 to, the Environment Act 1995, and in relation to England and Wales, by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989. Subsection 9 was inserted by paragraph 9 of the Employment Protection Act 1975 c. 71. Subsection (9A) was inserted by article 5(4) of S.I. 2004/3363. Subsection 10 was inserted by section 21 and paragraph 13 of Schedule 16 of the Norfolk and Suffolk Broads Act 1988 c. 4.

(6) 1983 c. 30. Section 9 was amended by section 120 of, and paragraph 23 of Schedule 15 to, the Environment Act 1995 (c. 25).

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## EXPLANATORY NOTE

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

Section 1 of the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) confers a general right of access to information held by Scottish public authorities. Section 26(a) provides that information is exempt from disclosure under section 1 if its disclosure, otherwise than under the 2002 Act, is prohibited by or under an enactment.

Section 64 of the 2002 Act gives Scottish Ministers the power to make an order to repeal or amend an enactment, in so far as it relates to any Scottish public authority, so as to remove or relax a prohibition that, by virtue of section 26(a) of the Act, is capable of preventing disclosure under section 1 of the Act.

This Order amends certain legislation to relax the statutory prohibitions on disclosure where the person making the disclosure is, or is acting on behalf of, a Scottish public authority for the purposes of the 2002 Act.

Articles 2 to 6 respectively amend section 154A(a) of the Factories Act 1961, section 59A(a) of the Office, Shops and Railway Premises Act 1963, section 118(1A)(a) of the Medicines Act 1968, sections 28(3)(f)(i) and 28(9A)(a) of the Health and Safety at Work etc. Act 1974 and section 9(1)(d) of the Diseases of Fish Act 1983 so that offences of disclosure of information do not apply where the disclosure is for the purposes of the 2002 Act.