

EXECUTIVE NOTE

THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (SCOTTISH PUBLIC AUTHORITIES) AMENDMENT ORDER 2008 - SSI/2008/297

1. The above Order was made in exercise of the powers conferred by section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the Act”). That power provides, in section 4(1)(a), that the Scottish Ministers may, by order, add a body or office holder to those listed in Schedule 1 of the Act, so designating it as a “Scottish public authority” for the purposes of the Act. A body or office holder may only be added provided that, as set out in Section 4(1)(a), any such body or office holder is not for the time being listed in Schedule 1 and is either a part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions (the definition of mixed functions or no reserved functions to be construed in accordance with paragraphs 1(4) and 2 of Part III of Schedule 5 to the Scotland Act 1998). The power also provides, in section 4(1)(b), that the Scottish Ministers may, by order, remove an entry for the time being listed in Schedule 1 to the Act. The Order is subject to negative parliamentary procedure under section 72(2)(a) of the Act.

2. The provisions of the Act commenced in full 1 January 2005 and its obligations apply to Scottish public authorities. The term “Scottish public authority” is defined for the purposes of the Act in section 3(1) as meaning a body or office which is listed in Schedule 1 to the Act, or designated under section 5, or a publicly-owned company as defined by section 6.

3. The general entitlement of the Act, as set out in section 1, is that a person who requests information from a Scottish public authority which holds it is entitled to be given the information. This entitlement is qualified by a number of exemptions and reasons set out the Act as to why information might not be provided.

4. This Order designates 11 public bodies or office holders as Scottish public authorities for the purposes of the Act by adding them to those already listed in Schedule 1 and removes 9 bodies as they no longer exist. As result of their addition to Schedule 1 the 11 newly designated bodies will be subject to the provisions and obligations of both the Act and also the terms of the Environmental Information (Scotland) Regulations 2004 (“the Regulations”). Those Regulations provide a similar regime for access to information to that prescribed in the Act but in relation to environmental information.

Background and Policy Objectives

5. The provisions and obligations of the Act (and the Regulations) currently cover over 10,000 Scottish public authorities designated in terms of the Act. The obligations under the Act include appropriate handling of requests for information, observance with Codes of Practice issued in terms of the Act and Regulations, adoption and maintenance of a publication scheme and the publication of information in accordance with such a scheme.

6. The Scottish Government supports freedom of information seeing it as an essential part of open democratic government and responsive public services. It is important that newly created bodies meeting the legislative criteria for coverage are obliged to operate within the legislative framework alongside all those already operating in the this way. This will enable continued delivery of greater transparency, accountability and engagement,

ensuring appropriate accessibility to information from such new bodies. It is also important to remove reference to authorities which are no longer in existence.

7. In many instances where new bodies or office holders have come into existence since the commencement of the legislation (or have ceased to exist) Schedule 1 has been amended by the relevant legislation that either created or abolished the body. However this has not been the case with either the 11 listed for addition to Schedule 1 or the 9 being deleted.

8. The 11 bodies or offices to be added to Schedule 1 by this Order each meet the conditions set out in section 4(a) of the Act – they not already listed in Schedule 1 and they are either part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions. The Act and the Regulations will apply to the bodies and office holders added to Schedule 1 as soon as the Order comes into force. The 9 bodies to be removed no longer exist. This is the first Order to be made under section 4(1).

9. The following table provides information about the legislation that created the 11 bodies and office holders that are to be added -

Body/Office Holder	Description
Drinking Water Quality Regulator for Scotland	Established under Water Industry Act 2002
Office of the Scottish Charity Regulator	Established under Charities and Trusts Investment (Scotland) Act 2005 and via s.104 order under Scotland Act 1998
National Waiting Times Centre Board	Special Health Board established 2002
NHS Education for Scotland	Special Health Board established 2002
NHS Health Scotland	Special Health Board established 2003
NHS Quality Improvement Scotland	Special Health Board established 2002
Commissioner for Children and Young People in Scotland	Established under The Commissioner for Children and Young People (Scotland) Act 2003.
Her Majesty's Chief Inspector of Prosecution in Scotland	Established under Criminal Proceedings Reform (Scotland) Act 2007
Quality Meat Scotland	Established under the Quality Meat Scotland Order 2008
Risk Management Authority	Established under Criminal Justice (Scotland) Act 2003
Scottish Local Authorities Remuneration Committee	Established under Local Governance (Scotland) Act 2004

Consultation

10. Each of the 11 bodies or office holder to be added to Schedule 1 has been consulted on its inclusion and is fully aware of its obligations under and responsibilities in terms of the Act and Regulations.

11. The Scottish Information Commissioner has been consulted on the terms of the Order and is assisting the 11 authorities in preparing for the Act and Regulations to apply to them.

Financial Effects

12. The instrument has no financial effects on the Scottish Executive, local government or on business. The bodies and office holders added to Schedule 1 will each be required under the Act to produce a Publication Scheme and to publish information routinely in line with that Scheme. They will also be required to answer requests for information that they hold. They will require to locate any such information requested, consider the application of relevant exemptions and reasons not to disclose, and to reply accordingly. There is no obligation for any Scottish public authority to reply to vexatious or repeated requests for information, or to deal with a request where the estimated cost of dealing with that request exceeds a prescribed threshold. The relevant bodies are expected to meet the costs associated with compliance from within existing budgets. Some of the bodies have already been acting as if they were covered by the terms of the Act, for instance NHS Education for Scotland.

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