

# FREEDOM OF INFORMATION ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part IV: Enforcement

#### *Section 50: Application for decision by Commissioner*

167. This section permits any person to complain to the Commissioner about an authority's compliance with the requirements of the Act in respect of a request for information by that person.
168. The Commissioner is required to make a decision on the authority's compliance unless:
- the complaint has not exhausted the authority's own complaints system;
  - the complainant has delayed too long before complaining;
  - the complaint is vexatious or frivolous; or
  - the complaint is withdrawn or abandoned.
- The Commissioner can in his discretion decide to reach a decision in a case where he is not obliged to do so under the Act.
169. *Subsection (3)* requires the Commissioner either to notify the complainant that he has not made a decision and his grounds for not doing so, or to serve notice of his decision on both the complainant and public authority.
170. *Subsection (4)* states that where the decision is that a public authority has failed in its duty to confirm or deny whether it holds information or its duty to communicate information, or has otherwise failed to comply with the Act as it relates to the means by which information may be communicated or refusal of requests, a decision notice must specify steps the public authority must take to comply with the Act and the time period for doing so. (In respect of a failure to comply with any requirement of Part I of the Act, the Commissioner would have discretion to issue an enforcement notice under section 52 whether or not any application had been made by a complainant.)
171. *Subsection (5)* states that a decision notice must contain information about the right of appeal to the Tribunal against that decision.
172. *Subsection (6)* provides that the time specified in a decision notice for complying with any steps required should not be shorter than the time available for an appeal to the Tribunal to be lodged. It also provides that an appeal shall be suspensory in effect as regards the matters affected by the appeal, and the steps specified in the decision notice would not have to be taken pending the outcome of the appeal.
173. *Subsection (7)* provides that any decision notice has effect subject to the 'accountable person' override provisions set out in section 53 (Exception from duty to comply with decision notice or enforcement notice).

### ***Section 51: Information notices***

174. This section enables the Commissioner to obtain from a public authority, by issuing an information notice, information (including unrecorded information) he requires to deal with an application under section 50 or to reach a determination on whether an authority has complied or is complying with Part I of the Act or with the Secretary of State's or Lord Chancellor's code of practice. He can specify the time for the authority to comply with the request and the form in which the information should be provided. This corresponds to the powers of the Commissioner under section 43 of the Data Protection Act 1998.
175. *Subsections (2) and (3)* require the Commissioner to specify in the information notice the basis for asking for the information and details of the rights of appeal against the notice.
176. *Subsections (5) and (6)* state that an authority is not required to supply the Commissioner with certain information relating to communications between a legal adviser and client (or a person representing a client) about the client's compliance with the Act or any proceedings arising from it.
177. *Subsection (7)* allows the Commissioner to cancel an information notice.

### ***Section 52: Enforcement notices***

178. This section enables the Commissioner to issue an enforcement notice if he is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act. The notice would require the authority to take, within a specified time, such steps as may be specified for complying with the requirements of Part I of the Act. The section contains provisions relating to appeals (comparable to those for decision notices and information notices). Again, any enforcement notice has effect subject to section 53 (Exception from duty to comply with decision notice or enforcement notice).
179. Provisions in section 52 correspond to the powers of the Commissioner under section 40 of the Data Protection Act 1998. Experience of enforcing data protection legislation suggests that the powers may be rarely needed and used only when informal procedures have failed.

### ***Section 53: Exception from duty to comply with decision notice or enforcement notice***

180. *Section 53* enables 'the accountable person' (as defined in subsection (8)) to give a certificate to the Commissioner in certain cases where a decision notice or enforcement notice has been issued. The effect of the certificate is that the public authority need not comply with the notice to which the certificate relates. A certificate may be issued only where the information concerned is exempt information (and thus, under section 2, a public interest test is relevant). A certificate must be given to the Commissioner no later than the twentieth working day following the effective date (subsection (2)). The accountable person may only issue such a certificate if he has on reasonable grounds formed the opinion that, in respect of the request to which the certificate relates, the authority has not failed to comply with its obligations. In practice this will mean that the accountable person has formed a view different from that of the Commissioner on the question of the public interest.
181. *Subsection (1)(a)* provides that this section applies in relation to decision or enforcement notices served on Government departments, the National Assembly for Wales and any other public authority designated for this purpose by the Secretary of State. Any order to designate any such body is subject to the affirmative resolution procedure under section 82(2). *Subsection (5)* sets out the bodies or person the Secretary of State must consult before making such an order. *Subsection (1)(b)* provides that the section only applies to decision notices or enforcement notices relating to a failure

to comply with the duty to confirm or deny that the authority holds the information requested, or the duty to disclose the information, where the only relevant exemptions are confirmed by any provision of Part II which does not confer absolute exemption.

182. *Subsection (3)* provides that the accountable person must lay a copy of the certificate before each House of Parliament, or the appropriate devolved Assembly, as soon as is practicable after issuing the certificate.
183. *Subsection (4)* defines the "effective date" in relation to a decision notice or enforcement notice, and it is the date from which the 20 working day period is counted.
184. *Subsection (6)* provides that where the certificate relates to a decision notice the accountable person must also inform the applicant (who was the complainant for the purposes of section 50) of his reasons for the decision, at the same time as giving the certificate to the Commissioner, or as soon after that time as is reasonably practicable.
185. *Subsection (7)* qualifies the previous subsection in that the accountable person is not obliged to provide information to the applicant, if, or to the extent that, it would involve the disclosure of exempt information.
186. *Subsection (8)* defines "accountable person".

#### ***Section 54: Failure to comply with notice***

187. This section provides sanctions for an authority's failure to comply with a decision notice, information notice, or enforcement notice. Failure, in respect of information notices, includes knowingly or recklessly making false statements. The Commissioner may certify failure to the court. The court may inquire into the matter and, after hearing witnesses or any statement on behalf of the public authority, deal with the authority as if it had committed a contempt of court. In this section, the court means the High Court in England and Wales or Northern Ireland or the Court of Session in Scotland.

#### ***Section 55: Powers of entry and inspection***

188. This section introduces Schedule 3 which makes provision for the Commissioner's powers of entry and inspection. The powers are similar to those available to the Commissioner under the Data Protection Act 1998.

#### ***Section 56: No action against public authority***

189. This section ensures that the Act does not create any right to an injunction or to sue for damages for breach of statutory duty. It does not affect the Commissioner's powers to issue enforcement notices. The section does not oust the courts' judicial review jurisdiction.