



# Freedom of Information Act 2000

## 2000 CHAPTER 36

### PART VIII

#### MISCELLANEOUS AND SUPPLEMENTAL

#### **74 Power to make provision relating to environmental information**

- (1) In this section “the Aarhus Convention” means the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed at Aarhus on 25th June 1998.
- (2) For the purposes of this section “the information provisions” of the Aarhus Convention are Article 4, together with Articles 3 and 9 so far as relating to that Article.
- (3) The Secretary of State may by regulations make such provision as he considers appropriate—
  - (a) for the purpose of implementing the information provisions of the Aarhus Convention or any amendment of those provisions made in accordance with Article 14 of the Convention, and
  - (b) for the purpose of dealing with matters arising out of or related to the implementation of those provisions or of any such amendment.
- (4) Regulations under subsection (3) may in particular—
  - (a) enable charges to be made for making information available in accordance with the regulations,
  - (b) provide that any obligation imposed by the regulations in relation to the disclosure of information is to have effect notwithstanding any enactment or rule of law,
  - (c) make provision for the issue by the Secretary of State of a code of practice,
  - (d) provide for sections 47 and 48 to apply in relation to such a code with such modifications as may be specified,
  - (e) provide for any of the provisions of Parts IV and V to apply, with such modifications as may be specified in the regulations, in relation to compliance with any requirement of the regulations, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (f) contain such transitional or consequential provision (including provision modifying any enactment) as the Secretary of State considers appropriate.

(5) This section has effect subject to section 80.

## 75 Power to amend or repeal enactments prohibiting disclosure of information

- (1) If, with respect to any enactment which prohibits the disclosure of information held by a public authority, it appears to the Secretary of State that by virtue of section 44(1)(a) the enactment is capable of preventing the disclosure of information under section 1, he may by order repeal or amend the enactment for the purpose of removing or relaxing the prohibition.
- (2) In subsection (1)—
- “enactment” means—
- (a) any enactment contained in an Act passed before or in the same Session as this Act, or
- (b) any enactment contained in Northern Ireland legislation or subordinate legislation passed or made before the passing of this Act;
- “information” includes unrecorded information.
- (3) An order under this section may do all or any of the following—
- (a) make such modifications of enactments as, in the opinion of the Secretary of State, are consequential upon, or incidental to, the amendment or repeal of the enactment containing the prohibition;
- (b) contain such transitional provisions and savings as appear to the Secretary of State to be appropriate;
- (c) make different provision for different cases.

## 76 Disclosure of information between Commissioner and ombudsmen

- (1) The Commissioner may disclose to a person specified in the first column of the Table below any information obtained by, or furnished to, the Commissioner under or for the purposes of this Act or the Data Protection Act 1998 if it appears to the Commissioner that the information relates to a matter which could be the subject of an investigation by that person under the enactment specified in relation to that person in the second column of that Table.

TABLE

<i>Ombudsman</i>	<i>Enactment</i>
The Parliamentary Commissioner for Administration.	The Parliamentary Commissioner Act 1967 (c. 13).
The Health Service Commissioner for England.	The Health Service Commissioners Act 1993 (c. 46).
The Health Service Commissioner for Wales.	The Health Service Commissioners Act 1993 (c. 46).
The Health Service Commissioner for Scotland.	The Health Service Commissioners Act 1993 (c. 46).

*Status: This is the original version (as it was originally enacted).*

<i>Ombudsman</i>	<i>Enactment</i>
A Local Commissioner as defined by section 23(3) of the Local Government Act 1974.	Part III of the Local Government Act 1974 (c. 7).
The Commissioner for Local Administration in Scotland.	Part II of the Local Government (Scotland) Act 1975 (c. 30).
The Scottish Parliamentary Commissioner for Administration.	The Scotland Act 1998 (Transitory and Transitional Provisions)(Complaints of Maladministration) Order 1999 (S.I. 1999/1351).
The Welsh Administration Ombudsman.	Schedule 9 to the Government of Wales Act 1998 (c. 38).
The Northern Ireland Commissioner for Complaints.	The Commissioner for Complaints (Northern Ireland) Order 1996 (S.I. 1996/1297 (N.I. 7)).
The Assembly Ombudsman for Northern Ireland.	The Ombudsman (Northern Ireland) Order 1996 (S.I. 1996/1298 (N.I. 8)).

- (2) Schedule 7 (which contains amendments relating to information disclosed to ombudsmen under subsection (1) and to the disclosure of information by ombudsmen to the Commissioner) has effect.

## 77 Offence of altering etc. records with intent to prevent disclosure

- (1) Where—
- a request for information has been made to a public authority, and
  - under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,
- any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.
- (2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) No proceedings for an offence under this section shall be instituted—
- in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;
  - in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

## **78 Saving for existing powers**

Nothing in this Act is to be taken to limit the powers of a public authority to disclose information held by it.

## **79 Defamation**

Where any information communicated by a public authority to a person (“the applicant”) under section 1 was supplied to the public authority by a third person, the publication to the applicant of any defamatory matter contained in the information shall be privileged unless the publication is shown to have been made with malice.

## **80 Scotland**

- (1) No order may be made under section 4(1) or 5 in relation to any of the bodies specified in subsection (2); and the power conferred by section 74(3) does not include power to make provision in relation to information held by any of those bodies.
- (2) The bodies referred to in subsection (1) are—
  - (a) the Scottish Parliament,
  - (b) any part of the Scottish Administration,
  - (c) the Scottish Parliamentary Corporate Body, or
  - (d) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

## **81 Application to government departments, etc**

- (1) For the purposes of this Act each government department is to be treated as a person separate from any other government department.
- (2) Subsection (1) does not enable—
  - (a) a government department which is not a Northern Ireland department to claim for the purposes of section 41(1)(b) that the disclosure of any information by it would constitute a breach of confidence actionable by any other government department (not being a Northern Ireland department), or
  - (b) a Northern Ireland department to claim for those purposes that the disclosure of information by it would constitute a breach of confidence actionable by any other Northern Ireland department.
- (3) A government department is not liable to prosecution under this Act, but section 77 and paragraph 12 of Schedule 3 apply to a person in the public service of the Crown as they apply to any other person.
- (4) The provisions specified in subsection (3) also apply to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as they apply to any other person.

## **82 Orders and regulations**

- (1) Any power of the Secretary of State to make an order or regulations under this Act shall be exercisable by statutory instrument.
- (2) A statutory instrument containing (whether alone or with other provisions)—

- (a) an order under section 5, 7(3) or (8), 53(1)(a)(iii) or 75, or
  - (b) regulations under section 10(4) or 74(3),
- shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument which contains (whether alone or with other provisions)—
- (a) an order under section 4(1), or
  - (b) regulations under any provision of this Act not specified in subsection (2)(b),
- and which is not subject to the requirement in subsection (2) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order under section 4(5) shall be laid before Parliament after being made.
- (5) If a draft of an order under section 5 or 7(8) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

### **83 Meaning of “Welsh public authority”**

- (1) In this Act “Welsh public authority” means—
- (a) any public authority which is listed in Part II, III, IV or VI of Schedule 1 and whose functions are exercisable only or mainly in or as regards Wales, other than an excluded authority, or
  - (b) any public authority which is an Assembly subsidiary as defined by section 99(4) of the Government of Wales Act 1998.
- (2) In paragraph (a) of subsection (1) “excluded authority” means a public authority which is designated by the Secretary of State by order as an excluded authority for the purposes of that paragraph.
- (3) Before making an order under subsection (2), the Secretary of State shall consult the National Assembly for Wales.

### **84 Interpretation**

In this Act, unless the context otherwise requires—

“applicant”, in relation to a request for information, means the person who made the request;

“appropriate Northern Ireland Minister” means the Northern Ireland Minister in charge of the Department of Culture, Arts and Leisure in Northern Ireland;

“appropriate records authority”, in relation to a transferred public record, has the meaning given by section 15(5);

“body” includes an unincorporated association;

“the Commissioner” means the Information Commissioner;

“decision notice” has the meaning given by section 50;

“the duty to confirm or deny” has the meaning given by section 1(6);

“enactment” includes an enactment contained in Northern Ireland legislation;

---

*Status: This is the original version (as it was originally enacted).*

---

“enforcement notice” has the meaning given by section 52;

“executive committee”, in relation to the National Assembly for Wales, has the same meaning as in the Government of Wales Act 1998;

“exempt information” means information which is exempt information by virtue of any provision of Part II;

“fees notice” has the meaning given by section 9(1);

“government department” includes a Northern Ireland department, the Northern Ireland Court Service and any other body or authority exercising statutory functions on behalf of the Crown, but does not include—

(a) any of the bodies specified in section 80(2),

(b) the Security Service, the Secret Intelligence Service or the Government Communications Headquarters, or

(c) the National Assembly for Wales;

“information” (subject to sections 51(8) and 75(2)) means information recorded in any form;

“information notice” has the meaning given by section 51;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“Northern Ireland Minister” includes the First Minister and deputy First Minister in Northern Ireland;

“Northern Ireland public authority” means any public authority, other than the Northern Ireland Assembly or a Northern Ireland department, whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters;

“prescribed” means prescribed by regulations made by the Secretary of State;

“public authority” has the meaning given by section 3(1);

“public record” means a public record within the meaning of the Public Records Act 1958 or a public record to which the Public Records Act (Northern Ireland) 1923 applies;

“publication scheme” has the meaning given by section 19;

“request for information” has the meaning given by section 8;

“responsible authority”, in relation to a transferred public record, has the meaning given by section 15(5);

“the special forces” means those units of the armed forces of the Crown the maintenance of whose capabilities is the responsibility of the Director of Special Forces or which are for the time being subject to the operational command of that Director;

“subordinate legislation” has the meaning given by subsection (1) of section 21 of the Interpretation Act 1978, except that the definition of that term in that subsection shall have effect as if “Act” included Northern Ireland legislation;

“transferred matter”, in relation to Northern Ireland, has the meaning given by section 4(1) of the Northern Ireland Act 1998;

“transferred public record” has the meaning given by section 15(4);

“the Tribunal” means the Information Tribunal;

“Welsh public authority” has the meaning given by section 83.

## **85 Expenses**

There shall be paid out of money provided by Parliament—

- (a) any increase attributable to this Act in the expenses of the Secretary of State in respect of the Commissioner, the Tribunal or the members of the Tribunal,
- (b) any administrative expenses of the Secretary of State attributable to this Act,
- (c) any other expenses incurred in consequence of this Act by a Minister of the Crown or government department or by either House of Parliament, and
- (d) any increase attributable to this Act in the sums which under any other Act are payable out of money so provided.

## **86 Repeals**

Schedule 8 (repeals) has effect.

## **87 Commencement**

(1) The following provisions of this Act shall come into force on the day on which this Act is passed—

- (a) sections 3 to 8 and Schedule 1,
- (b) section 19 so far as relating to the approval of publication schemes,
- (c) section 20 so far as relating to the approval and preparation by the Commissioner of model publication schemes,
- (d) section 47(2) to (6),
- (e) section 49,
- (f) section 74,
- (g) section 75,
- (h) sections 78 to 85 and this section,
- (i) paragraphs 2 and 17 to 22 of Schedule 2 (and section 18(4) so far as relating to those paragraphs),
- (j) paragraph 4 of Schedule 5 (and section 67 so far as relating to that paragraph),
- (k) paragraph 8 of Schedule 6 (and section 73 so far as relating to that paragraph),
- (l) Part I of Schedule 8 (and section 86 so far as relating to that Part), and
- (m) so much of any other provision of this Act as confers power to make any order, regulations or code of practice.

(2) The following provisions of this Act shall come into force at the end of the period of two months beginning with the day on which this Act is passed—

- (a) section 18(1),
- (b) section 76 and Schedule 7,
- (c) paragraphs 1(1), 3(1), 4, 6, 7, 8(2), 9(2), 10(a), 13(1) and (2), 14(a) and 15(1) and (2) of Schedule 2 (and section 18(4) so far as relating to those provisions), and
- (d) Part II of Schedule 8 (and section 86 so far as relating to that Part).

(3) Except as provided by subsections (1) and (2), this Act shall come into force at the end of the period of five years beginning with the day on which this Act is passed or on such day before the end of that period as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) An order under subsection (3) may contain such transitional provisions and savings (including provisions capable of having effect after the end of the period referred to in that subsection) as the Secretary of State considers appropriate.
- (5) During the twelve months beginning with the day on which this Act is passed, and during each subsequent complete period of twelve months in the period beginning with that day and ending with the first day on which all the provisions of this Act are fully in force, the Secretary of State shall—
  - (a) prepare a report on his proposals for bringing fully into force those provisions of this Act which are not yet fully in force, and
  - (b) lay a copy of the report before each House of Parliament.

## **88 Short title and extent**

- (1) This Act may be cited as the Freedom of Information Act 2000.
- (2) Subject to subsection (3), this Act extends to Northern Ireland.
- (3) The amendment or repeal of any enactment by this Act has the same extent as that enactment.