

FREEDOM OF INFORMATION (AMENDMENT) (SCOTLAND) ACT 2013

EXPLANATORY NOTES

THE ACT – SECTIONS

Section 4 – Historical periods

13. Section 57(1) of the 2002 Act defines the period of time after which a record becomes a “historical record”, which is currently thirty years. Section 58 of the 2002 Act identifies those exemptions which are time limited, including, at section 58(1), those exemptions which cannot be applied to information contained in a ‘historical record’.
14. Section 59 of the 2002 Act contains order-making powers to reduce the period of time after which a record becomes ‘historical’ (thereby reducing the period of time those exemptions mentioned at section 58(1) can be applied) and also the lifespans of those exemptions mentioned at section 58(2). Under the 2002 Act, an order amending the specified time period at section 57(1) affects all those exemptions mentioned at section 58(1) – it is not possible to reduce the lifespan of just some of the exemptions mentioned at section 58(1).
15. The Act replaces the existing power to modify section 57(1) with a new power to modify the rules around the meaning of “historical record”. In particular, it provides that in modifying the definition of “historical record” an order may set specific time periods (though not exceeding thirty years) beginning with the date on which the record is created, or a particular date in the calendar year following that date, in line with the power in section 59(1). Specifically in respect of the exemption in section 41(a) of the 2002 Act (Communications with Her Majesty etc.) the specified time period can begin with the occurrence of an event other than the creation of the record, for example, the death of the relevant member of the Royal Family.
16. The Act also amends section 59 to allow for an order in relation to either the meaning of “historical record”, or one changing the lifespan for exemptions in section 58, to make different provision for individual exemptions and records of certain descriptions, or for different time periods for particular records.
17. The Act further allows such an order to make such ancillary provision (consequential, supplementary, incidental, transitional, transitory or saving provisions) as the Scottish Ministers think fit.