



# Freedom of Information (Amendment) (Scotland) Act 2013

2013 asp 2

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th January 2013 and received Royal Assent on 19th February 2013**

An Act of the Scottish Parliament to amend provisions of the Freedom of Information (Scotland) Act 2002 relating to the designation of authorities, the effect of various exemptions and the time limit for certain proceedings.

## *Amendments*

### **1 Designation of authorities**

(1) In section 5 (further power to designate Scottish public authorities) of the FOI Act, for subsection (5) there is substituted—

- “(5) Before making an order under subsection (1), the Scottish Ministers must—
- (a) consult—
    - (i) every person to whom the order relates, or
    - (ii) persons appearing to them to represent such persons, and
  - (b) also consult such other persons as they consider appropriate.”.

(2) After section 7 of the FOI Act there is inserted—

#### **“7A Reports on section 5 power**

- (1) In accordance with this section, the Scottish Ministers must lay before the Parliament reports about the exercise of the section 5 power.
- (2) The first report is to be laid on or before 31 October 2015.
- (3) Each subsequent report is to be laid no later than 2 years after the date on which the previous report is laid.
- (4) A report must—
  - (a) state whether the section 5 power has been exercised during the reporting period, and

- (b) as the case may be—
  - (i) explain how the power has been exercised during the reporting period (and why), or
  - (ii) give the reason for leaving the power unexercised during the reporting period.

- (5) A report may—
  - (a) summarise any response to a consultation carried out during the reporting period as regards the exercise of the section 5 power,
  - (b) indicate any intention to exercise the power in the future,
  - (c) include such additional information as the Scottish Ministers consider appropriate.

- (6) In this section—
  - “reporting period” means—
    - (a) in the case of the first report, period of time from the date on which section 1 of the Freedom of Information (Amendment) (Scotland) Act 2013 comes into force until the date on which the first report is laid,
    - (b) in the case of a subsequent report, period of time from the date on which the previous report is laid until the date on which the subsequent report is laid,
  - “section 5 power” means order-making power conferred by section 5(1).”.

## 2 Refusal notices

In section 18 (further provision as respects responses to request) of the FOI Act, in subsection (1), after the words “sections 28 to 35,” there is inserted “38,”.

## 3 Accessible information

In section 25 (information otherwise accessible) of the FOI Act, for subsection (3) there is substituted—

- “(3) For the purposes of subsection (1), information is to be taken to be reasonably obtainable if—
- (a) it is available—
    - (i) on request from the Scottish public authority which holds it, and
    - (ii) in accordance with the authority’s publication scheme, and
  - (b) any associated payment required by the authority is specified in or determined under the scheme.”.

## 4 Historical periods

- (1) In section 59 (power to vary periods mentioned in sections 57 and 58) of the FOI Act—
  - (a) in subsection (1), the words “subsection (1) of section 57 or” are repealed,
  - (b) after subsection (1) there is inserted—

“(1A) The Scottish Ministers may by order—

- (a) make provision modifying any enactment in accordance with which a record becomes a “historical record” for the purposes of this Part, and
  - (b) do so by amending this Part or otherwise.
- (1B) Provision by virtue of subsection (1A) may (in particular) state that a record becomes such a “historical record”—
  - (a) in relation to the exemption under section 41(a), at the end of—
    - (i) a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date, or
    - (ii) a specified period (not exceeding 30 years) beginning with the occurrence of an event apart from the creation of the record,
  - (b) in relation to any other exemption under Part 2, at the end of a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date.
- (1C) An order under subsection (1) or (1A) may make different provision for—
  - (a) records of different descriptions,
  - (b) exemptions of different kinds,
  - (c) different purposes in other respects.”
- (c) in subsection (2)—
  - (i) after the words “subsection (1)” there is inserted “or (1A)”,
  - (ii) for the words “transitional provisions and savings” there is substituted “supplemental, incidental, consequential, transitional, transitory or saving provision”.
- (2) In section 72 (orders and regulations) of the FOI Act, after the words “59(1)” in subsection (2)(b) there is inserted “or (1A)”.

## **5 Time limit for proceedings**

After section 65 of the FOI Act there is inserted—

### **“65A Time limit for proceedings**

- (1) Proceedings for an offence under section 65(1) may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor’s knowledge.
- (2) No such proceedings may be commenced more than 3 years—
  - (a) after the commission of the offence, or
  - (b) in the case of a continuous contravention, after the last date on which the offence was committed.

- (3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.
- (4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in subsection (1) came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).
- (5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it does for those of that section."

### *General*

#### **6 Definition**

In this Act, "the FOI Act" means the Freedom of Information (Scotland) Act 2002.

#### **7 Commencement**

- (1) Section 6, this section and section 8 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

#### **8 Short title**

The short title of this Act is the Freedom of Information (Amendment) (Scotland) Act 2013.