

# FREEDOM OF INFORMATION ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part III: General functions of Secretary of State, Lord Chancellor and Information Commissioner**

##### *Section 45: Issue of code of practice by Secretary of State*

155. This requires the Secretary of State to issue, and from time to time revise, a code of practice setting out practices which he considers public authorities should follow in discharge of their duties in relation to Part I of the Act (access to information). It specifies particular matters which must be included in the code such as the advice and assistance that should be given to applicants and procedures for dealing with complaints. It also allows the code to make different provision for different authorities. *Subsection (4)* requires the Secretary of State to consult the Commissioner before making or revising a code; and *subsection (5)* provides for it to be laid before Parliament.
156. The matters to be included in the code are administrative ones that are an important part of good practice. They form an important part of the overall scheme for dealing with requests for information. For example, the code will include provision relating to the provision by authorities of arrangements for dealing with complaints from applicants. It is envisaged that an effective complaints system will enable the more straightforward complaints to be dealt with by the authorities themselves and help ensure the best use of the resources of the Commissioner who would be able to concentrate on more complex or difficult cases.

##### *Section 46: Issue of code of practice by Lord Chancellor*

157. This requires the Lord Chancellor to issue a code of practice setting out practices which he considers public authorities (and other authorities whose records are subject to the Public Records Act 1958) should follow in relation to the keeping, management and destruction of their records. In doing so, he is to have regard to the public interest in public access to such records. Different provision may be made in relation to different authorities. The Lord Chancellor must consult the Secretary of State and the Commissioner before making or revising the code, and it must be laid before Parliament. Corresponding provision for Northern Ireland is included.
158. For records which are also public records for the purposes of the Public Records Act 1958, the code may also include guidance as to the transfer of records to the Public Record Office and their review before transfer. Corresponding provision for Northern Ireland is included.
159. The requirement to have regard to the public interest in access to records reflects the intention that the code will establish standards of good practice in relation to record-keeping. Good practice would increase the efficiency with which information can be located and retrieved by authorities in response to requests for information, and

therefore increase the amount of information which will be available under Part I of the Act consistent with the imposition of cost limits.

***Section 47: General functions of Commissioner***

160. This section places a duty on the Commissioner to promote good practice by public authorities and promote the observance of the requirements of the Act and the Secretary of State's and Lord Chancellor's codes of practice. The duty to promote good practice includes, but goes wider than, the enforcement of the right of access under the Act; it enables the Commissioner to promote access to information held by public authorities in general. It could include the issue of advice on such matters as how to handle requests for information and the management of recorded information.
161. *Subsection (2)* places a duty on the Commissioner in relation to the dissemination to the public of information in relation to the operation of the Act, good practice, and other matters within the scope of his functions under the Act. He can also give advice to any person on any of these matters.
162. *Subsection (3)* enables the Commissioner to assess whether a public authority is following good practice, but only with the consent of the public authority.
163. *Subsection (4)* enables the Commissioner to charge for services provided under this section, subject to the consent of the Secretary of State. This allows him to charge for matters such as information, literature, or speaking engagements, but not, for example, for performing his statutory duties to enforce Part I of the Act.
164. *Subsection (5)* places a duty on the Commissioner from time to time as he considers appropriate to consult with the Keeper of Public Records or, in Northern Ireland, the Deputy Keeper of the Records of Northern Ireland about the promotion of observance of the Lord Chancellor's code of practice in respect of public records.

***Section 48: Recommendations as to good practice***

165. This section enables the Commissioner to take action where an authority's practices do not conform to the Secretary of State's or the Lord Chancellor's code of practice. He may issue a practice recommendation specifying the steps the authority should take to conform, but must consult first with the Keeper of Public Records when the practice recommendation relates to a failure to conform with the Lord Chancellor's code of practice and is issued in respect of records which are public records for the purposes of the Public Records Act 1958 or with the Deputy Keeper of the Records of Northern Ireland for public records for the purposes of the Public Records Act (Northern Ireland) 1923.

***Section 49: Reports to be laid before Parliament***

166. This section requires the Commissioner to lay before Parliament an annual report on the exercise of his functions under this Act, and enables him to lay before Parliament such other reports as he considers fit.