



# Freedom of Information Act 2000

## 2000 CHAPTER 36

### PART II

#### EXEMPT INFORMATION

#### **21 Information accessible to applicant by other means.**

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
- (2) For the purposes of subsection (1)—
  - (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
  - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.
- (3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

#### **22 Information intended for future publication.**

- (1) Information is exempt information if—
  - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time when the request for information was made, and

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- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

## [<sup>F1</sup>22A Research

- (1) Information obtained in the course of, or derived from, a programme of research is exempt information if—
  - (a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information), and
  - (b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice—
    - (i) the programme,
    - (ii) the interests of any individual participating in the programme,
    - (iii) the interests of the authority which holds the information, or
    - (iv) the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information).
- (2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)(b).]

### Textual Amendments

**F1** S. 22A inserted (1.10.2014) by [Intellectual Property Act 2014 \(c. 18\)](#), ss. 20, 24(1); S.I. 2014/2330, art. 3, Sch.

## 23 Information supplied by, or relating to, bodies dealing with security matters.

- (1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).
- (2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.
- (3) The bodies referred to in subsections (1) and (2) are—
  - (a) the Security Service,
  - (b) the Secret Intelligence Service,
  - (c) the Government Communications Headquarters,
  - (d) the special forces,
  - (e) the Tribunal established under section 65 of the Regulation of <sup>M1</sup>Investigatory Powers Act 2000,
  - (f) the Tribunal established under section 7 of the <sup>M2</sup>Interception of Communications Act 1985,

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- (g) the Tribunal established under section 5 of the <sup>M3</sup>Security Service Act 1989,
  - (h) the Tribunal established under section 9 of the <sup>M4</sup>Intelligence Services Act 1994,
  - (i) the Security Vetting Appeals Panel,
  - (j) the Security Commission,
  - (k) the National Criminal Intelligence Service, <sup>F2</sup> . . .
  - (l) the Service Authority for the National Criminal Intelligence Service.
  - [<sup>F3</sup>(m) the Serious Organised Crime Agency.]
  - [<sup>F4</sup>(n) the National Crime Agency.]
  - [<sup>F5</sup>(o) the Intelligence and Security Committee of Parliament.]
- (4) In subsection (3)(c) “the Government Communications Headquarters” includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.
- (5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

#### Textual Amendments

- F2** Word in s. 23(3)(k) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 159](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))
- F3** S. 23(3)(m) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 159](#); S.I. 2006/378, [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))
- F4** S. 23(3)(n) inserted (27.5.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 8 para. 102](#); S.I. 2013/1042, [art. 3\(1\)](#)
- F5** S. 23(3)(o) inserted (25.6.2013) by [Justice and Security Act 2013 \(c. 18\)](#), s. 20(1), [Sch. 2 para. 5\(2\)](#); S.I. 2013/1482, [art. 2](#) (with arts. 3, 4)

#### Marginal Citations

- M1** 2000 c. 23.  
**M2** 1985 c. 56.  
**M3** 1989 c. 5.  
**M4** 1994 c. 13.

## 24 National security.

- (1) Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.
- (2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
- (3) A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.

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- (4) A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

**25 Certificates under ss. 23 and 24: supplementary provisions.**

- (1) A document purporting to be a certificate under section 23(2) or 24(3) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (2) A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under section 23(2) or 24(3) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.
- (3) The power conferred by section 23(2) or 24(3) on a Minister of the Crown shall not be exercisable except by a Minister who is a member of the Cabinet or by the Attorney General, the Advocate General for Scotland or the Attorney General for Northern Ireland.

**26 Defence.**

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) the defence of the British Islands or of any colony, or
  - (b) the capability, effectiveness or security of any relevant forces.
- (2) In subsection (1)(b) “relevant forces” means—
- (a) the armed forces of the Crown, and
  - (b) any forces co-operating with those forces,
- or any part of any of those forces.
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

**27 International relations.**

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—
- (a) relations between the United Kingdom and any other State,
  - (b) relations between the United Kingdom and any international organisation or international court,
  - (c) the interests of the United Kingdom abroad, or
  - (d) the promotion or protection by the United Kingdom of its interests abroad.
- (2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.
- (3) For the purposes of this section, any information obtained from a State, organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.

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- (4) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)—
- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
  - (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.
- (5) In this section—
- “international court” means any international court which is not an international organisation and which is established—
    - (a) by a resolution of an international organisation of which the United Kingdom is a member, or
    - (b) by an international agreement to which the United Kingdom is a party;
  - “international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation;
  - “State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

## 28 Relations within the United Kingdom.

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice relations between any administration in the United Kingdom and any other such administration.
- (2) In subsection (1) “administration in the United Kingdom” means—
- (a) the government of the United Kingdom,
  - (b) the Scottish Administration,
  - (c) the Executive Committee of the Northern Ireland Assembly, or
  - [<sup>F6</sup>(d) the Welsh Assembly Government.]
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

### Textual Amendments

- F6** S. 28(2)(d) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 80** (the amendment coming into force immediately after the end of “the initial period” (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of [Government of Wales Act 2006 \(c. 32\)](#))

## 29 The economy.

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

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- (a) the economic interests of the United Kingdom or of any part of the United Kingdom, or
  - (b) the financial interests of any administration in the United Kingdom, as defined by section 28(2).
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

### **30 Investigations and proceedings conducted by public authorities.**

- (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of—
- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
    - (i) whether a person should be charged with an offence, or
    - (ii) whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct.
- (2) Information held by a public authority is exempt information if—
- (a) it was obtained or recorded by the authority for the purposes of its functions relating to—
    - (i) investigations falling within subsection (1)(a) or (b),
    - (ii) criminal proceedings which the authority has power to conduct,
    - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under any enactment, or
    - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
  - (b) it relates to the obtaining of information from confidential sources.
- (3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).
- (4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references—
- (a) to any officer of the authority,
  - (b) in the case of a government department other than a Northern Ireland department, to the Minister of the Crown in charge of the department, and
  - (c) in the case of a Northern Ireland department, to the Northern Ireland Minister in charge of the department.

[<sup>F7</sup>(5) In this section—

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“ criminal proceedings ” includes service law proceedings (as defined by section 324(5) of the Armed Forces Act 2006);

“ offence ” includes a service offence (as defined by section 50 of that Act).

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(6) In the application of this section to Scotland—

- (a) in subsection (1)(b), for the words from “a decision” to the end there is substituted “ a decision by the authority to make a report to the procurator fiscal for the purpose of enabling him to determine whether criminal proceedings should be instituted ”,
- (b) in subsections (1)(c) and (2)(a)(ii) for “which the authority has power to conduct” there is substituted “ which have been instituted in consequence of a report made by the authority to the procurator fiscal ”, and
- (c) for any reference to a person being charged with an offence there is substituted a reference to the person being prosecuted for the offence.

#### Textual Amendments

- F7** S. 30(5) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(1), 383(2), [Sch. 16 para. 176](#); S.I. 2009/812, [art. 3](#); S.I. 2009/1167, [art. 4](#)

#### Modifications etc. (not altering text)

- C1** S. 30 modified (24.4.2009 for certain purposes and 31.10.2009 otherwise) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), 205, [Sch. 1 para. 46\(1\)](#)
- C2** S. 30(5) modified (24.4.2009 for certain purposes and 31.10.2009 otherwise) by [The Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\)](#), arts. 1(3), 205, [Sch. 1 para. 46\(2\)](#)

## 31 Law enforcement.

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the [<sup>F8</sup>Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016] to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under an enactment.

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- (2) The purposes referred to in subsection (1)(g) to (i) are—
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
  - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
  - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
  - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
  - (e) the purpose of ascertaining the cause of an accident,
  - (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
  - (g) the purpose of protecting the property of charities from loss or misapplication,
  - (h) the purpose of recovering the property of charities,
  - (i) the purpose of securing the health, safety and welfare of persons at work, and
  - (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

#### Textual Amendments

- F8** Words in s. 31(1)(i) substituted (S.) (15.6.2017) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(asp 2\), s. 42\(2\), sch. 2 para. 8](#); S.S.I. 2017/155, reg. 2 (with regs. 4(2)5) and words in s. 31(1)(i) substituted (E.W. N.I.) (15.6.2017) by [The Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1142\), art. 1\(2\), Sch. para. 8](#) (with art. 7(2)); ; S.S.I. 2017/155, reg. 2

## 32 Court records, etc.

- (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—
- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
  - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
  - (c) any document created by—
    - (i) a court, or
    - (ii) a member of the administrative staff of a court,
 for the purposes of proceedings in a particular cause or matter.
- (2) Information held by a public authority is exempt information if it is held only by virtue of being contained in—
- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or



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- (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.
- (3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.
- (4) In this section—
  - (a) “court” includes any tribunal or body exercising the judicial power of the State,
  - (b) “proceedings in a particular cause or matter” includes [<sup>F9</sup>any investigation under Part 1 of the Coroners and Justice Act 2009, any inquest under the Coroners Act (Northern Ireland) 1959 and any] post-mortem examination,
  - (c) “inquiry” means any inquiry or hearing held under any provision contained in, or made under, an enactment, and
  - (d) except in relation to Scotland, “arbitration” means any arbitration to which Part I of the <sup>M5</sup>Arbitration Act 1996 applies.

#### Textual Amendments

**F9** Words in s. 32(4)(b) substituted (25.7.2013) by [Coroners and Justice Act 2009 \(c. 25\), s. 182\(4\)\(e\), Sch. 21 para. 44](#) (with s. 180); S.I. 2013/1869, art. 2(o)(xvi)

#### Modifications etc. (not altering text)

**C3** S. 32(2) excluded (7.6.2005) by [Inquiries Act 2005 \(c. 12\), ss. 18\(3\), 51\(1\)](#) (with ss. 44, 50); S.I. 2005/1432, art. 2

#### Marginal Citations

**M5** 1996 c. 23.

### 33 Audit functions.

- (1) This section applies to any public authority which has functions in relation to—
  - (a) the audit of the accounts of other public authorities, or
  - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
- (2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority’s functions in relation to any of the matters referred to in subsection (1).
- (3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority’s functions in relation to any of the matters referred to in subsection (1).

### 34 Parliamentary privilege.

- (1) Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

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- (2) The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.
- (3) A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.
- (4) In subsection (3) “the appropriate authority” means—
  - (a) in relation to the House of Commons, the Speaker of that House, and
  - (b) in relation to the House of Lords, the Clerk of the Parliaments.

### **35 Formulation of government policy, etc.**

- (1) Information held by a government department or by [<sup>F10</sup>the Welsh Assembly Government] is exempt information if it relates to—
  - (a) the formulation or development of government policy,
  - (b) Ministerial communications,
  - (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or
  - (d) the operation of any Ministerial private office.
- (2) Once a decision as to government policy has been taken, any statistical information used to provide an informed background to the taking of the decision is not to be regarded—
  - (a) for the purposes of subsection (1)(a), as relating to the formulation or development of government policy, or
  - (b) for the purposes of subsection (1)(b), as relating to Ministerial communications.
- (3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
- (4) In making any determination required by section 2(1)(b) or (2)(b) in relation to information which is exempt information by virtue of subsection (1)(a), regard shall be had to the particular public interest in the disclosure of factual information which has been used, or is intended to be used, to provide an informed background to decision-taking.
- (5) In this section—
  - “government policy” includes the policy of the Executive Committee of the Northern Ireland Assembly and the policy of [<sup>F11</sup>the Welsh Assembly Government];
  - “the Law Officers” means the Attorney General, the Solicitor General, the Advocate General for Scotland, the Lord Advocate, the Solicitor General for Scotland [<sup>F12</sup>, the Counsel General to the Welsh Assembly Government] and the Attorney General for Northern Ireland;
  - “Ministerial communications” means any communications—
    - (a) between Ministers of the Crown,

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- (b) between Northern Ireland Ministers, including Northern Ireland junior Ministers, or
- (c) [<sup>F13</sup>between members of the Welsh Assembly Government]

and includes, in particular, proceedings of the Cabinet or of any committee of the Cabinet, proceedings of the Executive Committee of the Northern Ireland Assembly, and proceedings of [<sup>F14</sup>the Cabinet or any committee of the Cabinet of the Welsh Assembly Government];

“Ministerial private office” means any part of a government department which provides personal administrative support to a Minister of the Crown, to a Northern Ireland Minister or a Northern Ireland junior Minister or [<sup>F15</sup>any part of the administration of the Welsh Assembly Government providing personal administrative support to the members of the Welsh Assembly Government];

“Northern Ireland junior Minister” means a member of the Northern Ireland Assembly appointed as a junior Minister under section 19 of the <sup>M6</sup>Northern Ireland Act 1998.

#### Textual Amendments

- F10** Words in s. 35(1) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(2)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F11** S. 35(5): words in definition of "government policy" substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(3)(a)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F12** S. 35(5): words in definition of "the Law Officers" substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(3)(b)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F13** S. 35(5): para. (c) in definition of "Ministerial communications" substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(c)(i)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F14** S. 35(5): words in definition of "Ministerial communications" substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(c)(ii)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F15** S. 35(5): words in definition of "Ministerial private office" substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 81(d)** (the amendment coming into force immediately after the end of "the initial

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period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))

#### Marginal Citations

**M6** 1998 c. 47.

### 36 Prejudice to effective conduct of public affairs.

- (1) This section applies to—
- (a) information which is held by a government department or by [<sup>F16</sup>the Welsh Assembly Government] and is not exempt information by virtue of section 35, and
  - (b) information which is held by any other public authority.
- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
- (a) would, or would be likely to, prejudice—
    - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
    - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
    - [<sup>F17</sup>(iii) the work of the Cabinet of the Welsh Assembly Government.]
  - (b) would, or would be likely to, inhibit—
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
- (3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).
- (4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”.
- (5) In subsections (2) and (3) “qualified person”—
- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
  - (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
  - (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
  - (d) in relation to information held by the House of Commons, means the Speaker of that House,
  - (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
  - (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,

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- [<sup>F18</sup>(g) in relation to information held by the Welsh Assembly Government, means the Welsh Ministers or the Counsel General to the Welsh Assembly Government,
  - (ga) in relation to information held by the National Assembly for Wales, means the Presiding Officer of the National Assembly for Wales,
  - (gb) in relation to information held by any Welsh public authority (other than one referred to in section 83(1)(b)(ii) (subsidiary of the Assembly Commission), the Auditor General for Wales [<sup>F19</sup>, the Wales Audit Office] or the Public Services Ombudsman for Wales), means—
    - (i) the public authority, or
    - (ii) any officer or employee of the authority authorised by the Welsh Ministers or the Counsel General to the Welsh Assembly Government”,
  - (gc) in relation to information held by a Welsh public authority referred to in section 83(1)(b)(ii), means—
    - (i) the public authority, or
    - (ii) any officer or employee of the authority authorised by the Presiding Officer of the National Assembly for Wales,]
  - (i) in relation to information held by the National Audit Office [<sup>F20</sup>or the Comptroller and Auditor General], means the Comptroller and Auditor General,
  - (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
  - (k) in relation to information held by the Auditor General for Wales [<sup>F21</sup>or the Wales Audit Office], means the Auditor General for Wales,
  - [<sup>F22</sup>(ka) in relation to information held by the Public Services Ombudsman for Wales, means the Public Services Ombudsman for Wales,]
  - (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means—
    - (i) the public authority, or
    - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
  - (m) in relation to information held by the Greater London Authority, means the Mayor of London,
  - (n) in relation to information held by a functional body within the meaning of the <sup>M7</sup>Greater London Authority Act 1999, means the chairman of that functional body, and
  - (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means—
    - (i) a Minister of the Crown,
    - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
    - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
- (6) Any authorisation for the purposes of this section—
- (a) may relate to a specified person or to persons falling within a specified class,
  - (b) may be general or limited to particular classes of case, and
  - (c) may be granted subject to conditions.

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- (7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion—
- (a) disclosure of information held by either House of Parliament, or
  - (b) compliance with section 1(1)(a) by either House,
- would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

#### Textual Amendments

- F16** Words in s. 36(1)(a) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 82(2)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F17** S. 36(2)(a)(iii) substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 82(3)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F18** S. 36(5)(g)-(gc) substituted for s. 36(5)(h) by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 82(4)(a)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))
- F19** Words in s. 36(5)(gb) inserted (E.W.) (1.4.2014) by [Public Audit \(Wales\) Act 2013 \(anaw 3\)](#), s. 35(2), **Sch. 4 para. 18(2)** (with [Sch. 3 para. 3](#)); S.I. 2013/1466, art. 3(1)
- F20** Words in s. 36(5)(i) inserted (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, **Sch. 5 para. 22(1)**; S.I. 2011/2576, art. 5
- F21** Words in s. 36(5)(k) inserted (E.W.) (1.4.2014) by [Public Audit \(Wales\) Act 2013 \(anaw 3\)](#), s. 35(2), **Sch. 4 para. 18(3)** (with [Sch. 3 para. 3](#)); S.I. 2013/1466, art. 3(1)
- F22** S. 36(5)(ka) inserted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, **Sch. 1 para. 82(4)(b)** (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see [ss. 46, 161\(5\) of Government of Wales Act 2006 \(c. 32\)](#))

#### Modifications etc. (not altering text)

- C4** S. 36(5)(i) amended (1.4.2012) by [Budget Responsibility and National Audit Act 2011 \(c. 4\)](#), s. 29, **Sch. 5 para. 22(2)**; S.I. 2011/2576, art. 5

#### Marginal Citations

- M7** 1999 c. 29.

### 37 Communications with Her Majesty, etc. and honours.

- (1) Information is exempt information if it relates to—
- <sup>F23</sup>(a) communications with the Sovereign,
  - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,

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- (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,
  - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and
  - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or]
  - (b) the conferring by the Crown of any honour or dignity.
- (2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

#### Textual Amendments

**F23** S. 37(1)(a)-(ad) substituted for s. 37(1)(a) (19.1.2011) by [Constitutional Reform and Governance Act 2010 \(c. 25\)](#), ss. 46(1), 52(2), [Sch. 7 para. 3](#); S.I. 2011/46, [art. 3\(b\)\(i\)](#) (with art. 4)

### 38 Health and safety.

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to—
- (a) endanger the physical or mental health of any individual, or
  - (b) endanger the safety of any individual.
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

### 39 Environmental information.

- (1) Information is exempt information if the public authority holding it—
- (a) is obliged by [<sup>F24</sup>environmental information regulations] to make the information available to the public in accordance with the regulations, or
  - (b) would be so obliged but for any exemption contained in the regulations.

[<sup>F25</sup>(1A) In subsection (1) “ environmental information regulations ” means—

- (a) regulations made under section 74, or
  - (b) regulations made under section 2(2) of the European Communities Act 1972 for the purpose of implementing any [<sup>F26</sup>EU] obligation relating to public access to, and the dissemination of, information on the environment.]
- (2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
- (3) Subsection (1)(a) does not limit the generality of section 21(1).

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### Textual Amendments

- F24** Words in s. 39(1)(a) substituted (1.1.2005) by [The Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#), [reg. 20\(2\)](#) (with [reg. 3](#))
- F25** S. 39(1A) inserted (1.1.2005) by [The Environmental Information Regulations 2004 \(S.I. 2004/3391\)](#), [reg. 20\(3\)](#) (with [reg. 3](#))
- F26** Words in s. 39(1A)(b) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 3, [6\(1\)\(e\)](#)

## 40 Personal information.

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
- (a) it constitutes personal data which [<sup>F27</sup>does] not fall within subsection (1), and
  - (b) [<sup>F28</sup>the first, second or third] condition below is satisfied.
- [<sup>F29</sup>(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
- (a) would contravene any of the data protection principles, or
  - (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.
- (3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).]
- [<sup>F30</sup>(4A) The third condition is that—
- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
  - (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.]

[<sup>F31</sup>(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

    - (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
      - (i) would (apart from this Act) contravene any of the data protection principles, or
      - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;



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- (b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
- (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);
- (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.]

<sup>F32</sup>(6) . . . . .

[<sup>F33</sup>(7) In this section—

“the data protection principles” means the principles set out in—

- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

- (8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.]

#### Textual Amendments

- F27** Words in s. 40(2)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(2)(a)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F28** Words in s. 40(2)(b) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(2)(b)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F29** S. 40(3A)(3B) substituted for s. 40(3) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(3)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F30** S. 40(4A) substituted for s. 40(4) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(4)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F31** S. 40(5A)(5B) substituted for s. 40(5) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(5)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F32** S. 40(6) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(6)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)
- F33** S. 40(7)(8) substituted for s. 40(7) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 58(7)** (with ss. 117, 209, 210, Sch. 20 para. 52); S.I. 2018/625, reg. 2(1)(g)

## 41 Information provided in confidence.

(1) Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and

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- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
- (2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

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**Modifications etc. (not altering text)**

- C5** S. 41(1) extended (E.W.) (5.11.2013) by [Mobile Homes \(Wales\) Act 2013 \(anaw 6\)](#), **ss. 61(8), 64(1)** (with [Sch. 5 para. 7](#))

**42 Legal professional privilege.**

- (1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.
- (2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

**43 Commercial interests.**

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

**44 Prohibitions on disclosure.**

- (1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—
  - (a) is prohibited by or under any enactment,
  - (b) is incompatible with any [<sup>F34</sup>retained EU obligation], or
  - (c) would constitute or be punishable as a contempt of court.
- (2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

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**Textual Amendments**

- F34** Words in s. 44(1)(b) substituted (31.12.2020) by [The Freedom of Information Act 2000 \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1353\)](#), regs. 1, 2; 2020 c. 1, Sch. 5 para. 1(1)

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**Modifications etc. (not altering text)**

- C6** S. 44 excluded (1.12.2007) by [Statistics and Registration Service Act 2007 \(c. 18\), ss. 40\(1\)\(2\), 74; S.I. 2007/3388, art. 2\(f\)](#)
- C7** S. 44(1)(a) modified (7.4.2005 at 5:45 p.m.) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), ss. 23, 53\(1\); S.I. 2005/1126, art. 2\(1\)](#)

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