

# CONSTITUTIONAL REFORM AND GOVERNANCE ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 7: amendments of Freedom of Information Act 2000*

313. *Paragraph 2* amends section 2(3) of the FOIA 2000, to make the exemption in section 37 of the FOIA 2000 an absolute exemption insofar as it relates to information about communications falling within one of the first three categories of information created by *paragraph 3*.
314. *Paragraph 3* amends section 37(1)(a) of the FOIA 2000, which creates a qualified exemption from disclosure for information relating to communications with Her Majesty, other members of the Royal Family, and the Royal Household. The amendment brings within the exemption information relating to five categories of communication:
- with the Sovereign (new section 37(1) (a)).
  - with the heir to the Throne or the second in line to the Throne (new section 37(1) (aa)).
  - with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne (new section 37(1) (ab)).
  - with other members of the Royal Family, except when acting on behalf of a person falling within one of the first three categories (new section 37(1)(ac)).
  - with the Royal Household, except when acting on behalf of a person falling within one of the first three categories (new section 37(1)(ad)).
315. FOIA 2000 provides that certain exemptions from disclosure do not apply to information contained in a “historical record”. *Paragraph 4* amends the definition of this term in section 62(1) of the FOIA 2000 so that records become “historical records” after 20 years rather than 30 years. *Sub-paragraph (3)* provides that, for 10 years after *paragraph 4* is commenced, the reduction from 30 to 20 years is subject to any transitional order made under *section 46(2)*.
316. *Paragraph 5* amends section 63 of the FOIA 2000, which specifies which exemptions from disclosure can apply to “historical records”.
317. *Sub-paragraphs (2) and (3)* reduce from 30 years to 20 years the maximum duration of the exemptions in sections 30(1) (investigations and proceedings conducted by public authorities), 32 (court records), 33 (audit functions), 35 (formulation of government policy) and 42 (legal professional privilege) of the FOIA 2000.
318. *Sub-paragraph (4)* inserts new subsections into section 63 of the FOIA 2000 as follows:

*These notes refer to the Constitutional Reform and Governance Act 2010 (c.25) which received Royal Assent on 8th April 2010*

- a. New subsections (2A) and (2B) reduce to 20 years the period after which the exemption in section 36 of the FOIA 2000 (prejudice to effective conduct of public affairs) ceases to apply. However, the reduction does not apply to section 36(2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and, in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland, section 36(2)(c).
  - b. New subsections (2C) and (2D) maintain at 30 years the maximum duration of the exemptions in sections 28 (relations within the UK), 43 (commercial interests), 36(2)(a)(ii) (information which would or would be likely to prejudice the work of the Executive Committee of the Northern Ireland Assembly) and 36(2)(c), in so far as disclosure would prejudice the effective conduct of public affairs in Northern Ireland.
  - c. New subsections (2E) and (2F) create time limits after which the exemptions in the new sections 37(1)(a) to (ad) of the FOIA 2000, inserted by *paragraph 3*, no longer applies. The exemption ceases to apply 20 years after the creation of the record in which the information is contained, or 5 years after the death of the relevant member of the Royal Family, whichever is longer. In the case of communications with the Royal Household falling within the fifth category, the relevant member of the Royal Family for these purposes is the Sovereign reigning when the record in question was created.
319. *Paragraph 6* inserts a new section 80A into FOIA 2000, providing that the amendments made by *Schedule 7* will not apply to information held by the Northern Ireland Assembly, any Northern Ireland department and any Northern Ireland public authority. The FOIA 2000 will apply to these bodies as if the amendments had not been made.