
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Data Protection Act 1998 (“the DPA”) and the Freedom of Information Act 2000 (“the FOIA”) in consequence of the enactment of the Freedom of Information (Scotland) Act 2002 (“the FOISA”).

Article 2 amends section 1 of the DPA to extend the amendments to that Act made by section 68(2) and (3) of the FOIA so that the relationship between the DPA and the FOISA mirrors that between the DPA and the FOIA in that respect. In that article:

- (a) paragraph (2)(a) substitutes a new definition of “public authority” in section 1(1) of the DPA which includes both a “public authority” as defined by the FOIA and a “Scottish public authority” as defined by the FOISA;
- (b) paragraph (2)(b) amends section 1(5) of the DPA to the effect that “held” (in relation to information being held by a public authority) shall be construed in accordance with the relevant provisions of the FOIA or section 3(2), (4) and (5) of the FOISA; and
- (c) paragraph (2)(c) amends section 1(6) of the DPA to provide that where the provisions of the FOISA are prevented from applying to certain information held by a public authority by virtue of section 7(1) of that Act, such information is not to be treated as held by the public authority for the purposes of paragraph (e) of the definition of “data” in section 1(1) of the DPA.

Article 3 amends the FOIA as follows:

- (a) paragraph (2) adds a new section 76A to permit the UK Information Commissioner to share certain information with the Scottish Information Commissioner (reciprocal provisions are contained in section 63 of the FOISA); and
- (b) paragraph (3) adds a new subsection (3) to section 80 to extend the application of section 50 of the Copyright, Designs and Patents Act 1988 to the FOISA as it applies to the FOIA.