
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force sections 45 (for specified purposes) and (so far as not already in force) 46 of, and Schedule 7 to, the Constitutional Reform and Governance Act 2010 (c. 25) (“the 2010 Act”).

Section 45(1)(a) of the 2010 Act reduces the period by the end of which public records are required by section 3(4) of the Public Records Act 1958 (c. 51) (“the 1958 Act”) to be transferred to the Public Record Office (which exercises its functions as part of The National Archives) or other place of deposit. In future, transfer will generally be required no later than the end of 20 years from the date on which the record was created, as opposed to 30 years. Section 45(1)(b) provides that, for a period of 10 years from the date of its commencement, this reduction takes effect subject to any transitional, transitory or saving provision made by order by the Secretary of State under section 45(2) to (5).

Article 3(1)(a) brings section 45(1) into force from 1st January 2013, except for the purposes of transferring records of a type specified in the Schedule to this Order. The specified records remain subject to the obligation to transfer records within 30 years of their creation. Article 2(a) brings the remainder of section 45 into force from the day after the day on which this order is made, to enable transitional provision to be made (by separate order) to coincide with the commencement of section 45(1)(a) and (b).

Under section 146 of the Government of Wales Act 2006 (c. 32) (“the 2006 Act”) Welsh public records (as defined by section 148 of that Act) are not public records under the 1958 Act. However, until an Order is made by the Lord Chancellor under section 147 of the 2006 Act transferring responsibility for Welsh public records to Welsh Ministers, such records remain subject to the 1958 Act (including the obligation to transfer under section 3(4)). Accordingly, this Order applies to those records as it does to public records within the meaning of the 1958 Act.

Article 3(1)(b) brings (so far as not already in force) section 46(1) and Schedule 7 into force from 1st January 2013 for all purposes. Paragraph 4 of Schedule 7 to the 2010 Act provides for a reduction in the period after expiry of which a record becomes a historical record for the purposes of the Freedom of Information Act 2000. Before commencement of paragraph 4, a record becomes a historical record at the end of a period of 30 years beginning with the year after that in which it was created. After commencement this period will be 20 years.

Paragraph 4 also provides that, for a period of 10 years from the date of its commencement, this reduction takes effect subject to any transitional, transitory or saving provision made by order by the Secretary of State. The remainder of Schedule 7 makes changes to the 2000 Act so that in some cases certain exemptions continue to apply to historical records until the 30 year, rather than the new 20 year, point.

Article 2(b) brings the remainder of section 46 into force from the day after the day on which this Order is made, with a view to enabling transitional provision as to be made (by separate order) to coincide with the commencement of section 46(1) and Schedule 7.