

EXPLANATORY MEMORANDUM TO
THE FREEDOM OF INFORMATION (DESIGNATION AS PUBLIC AUTHORITY
AND AMENDMENT) ORDER 2018

2018 No. 1212

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This order designates the National Police Chiefs' Council as a public authority for the purposes of the Freedom of Information Act 2000 ("the Act"). It further removes the designation of the National Police Chiefs' Council's predecessor, the Association of Chief Police Officers (see paragraph 7.3 below).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

- 4.1 The Act applies to public authorities as defined by section 3 of the Act. Included in that definition is a person designated by an order made under section 5 of the Act. Section 5(1)(a) of the Act allows the Secretary of State or Minister for the Cabinet Office to designate a public authority which appears to the same to exercise functions of a public nature.
- 4.2 Section 5(3) of the Act states that before making an order under this section the Secretary of State or Minister for the Cabinet Office must consult every person to whom this order relates, or persons appearing to represent such persons.
- 4.3 Section 7(5) of the Act provides that an order under section 5(1) must specify the functions of the public authority designated by the order with respect to which the designation is to have effect.
- 4.4 Section 14 of the Interpretation Act 1978 provides, insofar as relevant, that where an Act confers power to make orders, it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to amend any instrument made under the power.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Policing and the Fire Service, Nick Hurd, has made the following statement regarding Human Rights:

“In my view the provisions of the Freedom of Information (Designation as Public Authority and Amendment) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Government regards the Act as a fundamental part of the UK’s approach to transparency. Transparency in public administration is necessary to maintain public trust and confidence, and drives improvements by holding bodies and offices bound by the Act to account.
- 7.2 This Order will ensure the National Police Chiefs’ Council is covered by the Act.
- 7.3 In 2011, the Association of Chief Police Officers of England, Wales and Northern Ireland¹ (“ACPO”) was designated as a public authority under the Act by the Freedom of Information (Designation as Public Authorities) Order 2011 (S.I. 2011/2598, “the 2011 Order”). On 1 April 2015, the National Police Chiefs’ Council (“NPCC”) replaced ACPO as the body which provides national police coordination and leadership. ACPO is currently in liquidation and, for all practical purposes, has ceased to function.
- 7.4 This Order designates the NPCC as a public authority under the Act to ensure the NPCC is subject to the Act’s provisions as its predecessor was. In his answer of 6 November 2017 to a Parliamentary question by Louise Haigh (PQ 110849), the Minister of State for Policing and the Fire Service committed to bringing forward such an Order.
- 7.5 As with ACPO, it appears to the Secretary of State that the NPCC exercises functions of a public nature in relation to all its functions. The NPCC provides national police coordination and leadership. It brings together police forces across the UK as well as in the armed services and the Crown Dependencies. Some of the NPCC’s coordination and leadership are delivered in conjunction with the College of Policing, the professional body that provides the policing skills and knowledge necessary to prevent crime and protect the public.² The functions set out in the Order reflect those set out in clause 7 of the collaboration agreement that established the NPCC.
- 7.6 In this respect, the NPCC was established by a collaboration agreement dated 1 April 2015 under section 22A of the Police Act 1996. This agreement may be found here: <http://www.npcc.police.uk/documents/NPCC%20Section%2022a%20Agreement.pdf>. This agreement is currently undergoing revision and will shortly be replaced. The NPCC’s functions as listed in the revised agreement are materially identical to those in the existing agreement, and this Order’s designation of the NPCC will continue to be effective once the new agreement enters into force.

¹ A company incorporated under the Companies Act 1985 with the registration number 3344583; on 12 June 2013, it was renamed the Association of Chief Police Officers of the United Kingdom.

² A company incorporated under the Companies Act 2006 with the registration number 08235199. Further details regarding the role of the College of Policing can be found here: <http://www.college.police.uk/About/Pages/default.aspx>

- 7.7 The Secretary of State considers that each of these functions makes a fundamental contribution to the policing of the state in such a way that they are, together and individually, functions of a public nature that are eligible for inclusion in an order made under section 5 of the Act.
- 7.8 This Order also amends the 2011 Order so as to remove the designation of ACPO. ACPO is in liquidation and no longer exercises any function of a public nature. Its designation should therefore be removed for legal clarity.

Consolidation

- 7.9 Consolidation does not apply to this Order.

8. Consultation outcome

- 8.1 In accordance with section 5(3) of the Act, the NPCC and ACPO were consulted. The NPCC was consulted between 4 December 2017-26 January 2018 and the Chair of the NPCC confirmed the NPCC's support for the Order's designation of the NPCC. ACPO was consulted between 26 April-1 May 2018 and the liquidators of ACPO confirmed their support for the Order's removal of ACPO's designation from the 2011 Order.

9. Guidance

- 9.1 There is no associated guidance.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is not expected to be significant. The 'Investigative study to inform the FOIA (2000) post-legislative review – cost exercise' by IPSOS MORI for the Ministry of Justice, published in March 2012, estimated that the average cost for central government of handling a request for information was £184 in staff time, and for public authorities in the wider public sector they estimated the average to be £164. There is no obligation for public authorities to comply with vexatious requests or those that exceed the costs threshold determined by the Secretary of State or the Minister for the Cabinet Office. Costs for disbursements can be recovered. It is unlikely the volume of requests received by the NPCC, which already responds voluntarily to requests for information, will result in significant new costs.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 No specific monitoring and review arrangements are needed. The Information Commissioner is the independent regulator for the Act.

13. Contact

- 13.1 Lauren Diffey at the Home Office (telephone: 0207 035 3011 or email: lauren.diffey@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.