

EXPLANATORY MEMORANDUM TO

THE FREEDOM OF INFORMATION (ADDITIONAL PUBLIC AUTHORITIES ORDER) 2022

2022 No. 669

AND

THE FREEDOM OF INFORMATION (REMOVAL OF REFERENCES TO PUBLIC AUTHORITIES) ORDER 2022

2022 No. 682

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Freedom of Information (Additional Public Authorities) Order 2022 (“the Adding Order”) adds a number of bodies and officer holders to Part 2 and Part 6 of Schedule 1 to the Freedom of Information Act 2000 (“the Act”). Bodies and office holders listed in Schedule 1 to the Act are considered to be public authorities for the purposes of the Act and as a result each body and office holder will be required to make information available to the public in accordance with the Act.
- 2.2 The Freedom of Information (Removal of References to Public Authorities) Order 2022 (“the Removing Order”) removes references to public authorities from Part 6 of Schedule 1 to the Act. On the date the Order enters into force those authorities will either have ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and (3) of the Act which set out the criteria for inclusion within Schedule 1 to the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State, Lord True, has made the following statement regarding Human Rights:

“In my view the provisions of the Freedom of Information (Additional Public Authorities) Order 2022 and the Freedom of Information (Removal of Reference to Public Authorities) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 4(1) of the Act allows the Minister for the Cabinet Office or the Secretary of State to amend Schedule 1, and bring within scope of the Act, a body or office holder who meets the following conditions:
- 6.2 Section 4(2): that the body or office is established by Her Majesty’s prerogative, enactment or subordinate legislation, or by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government; and
- 6.3 Section 4(3): that in the case of a body, it is wholly or partly constituted by appointment made by the Crown, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government.
- 6.4 The purpose of an order under section 4(1) of the Act is to add newly created bodies or offices, or public bodies or offices which had not previously been added, to the list of “public authorities” to whom the Act applies.
- 6.5 The bodies and office holders to be added to Schedule 1 by the Adding Order each meet the conditions set out in section 4(2) and (3) of the Act. This is the ninth order made under section 4(1) of the Act.
- 6.6 Section 4(5) of the Act provides that the Minister for the Cabinet Office or the Secretary of State may remove from Schedule 1 a reference to any body or office holder that has:
- 6.7 Section 4(5)(a): ceased to exist, or
- 6.8 Section 4(5)(b): ceased to satisfy either the first or the second condition for inclusion in an order under section 4(1) of the Act.
- 6.9 The purpose of an order under section 4(5) of the Act is to remove references to bodies that have ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and (3). The Removing Order is the eighth order made under section 4(5) of the Act.

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. In order for the Act to fulfil these aims, updates of Schedule 1 are required to ensure that the Act extends to those bodies that should be covered because they meet the relevant statutory criteria. For clarity and accuracy, updates are also required to Schedule 1 to remove bodies that have ceased to exist, have changed their names or no longer meet the statutory criteria for being bound by the Act.
- 7.2 The Adding Order adds five bodies to the list of public authorities in Schedule 1 to the Act. The bodies being added include a number of bodies that have been set up since the last order under section 4(1) was made. It also adds entries corresponding to those removed by the Removing Order where a body’s name has changed. The Act will apply to these bodies from the date the Adding Order comes into force on 1st September 2022.

- 7.3 The Removing Order removes four public bodies from the scope of the Act. Three of the bodies and offices continue to exist either under a different name, or as a different type of organisation. The three whose names have changed are being added to Schedule 1 under their respective new names by the Adding Order. The final body of these four has ceased to meet the statutory criteria for a public authority under sections 4(2) and 4(3) of the Act and is therefore being removed from the scope of the Act. It is therefore appropriate to remove them from Schedule 1 to ensure that the list of public authorities is accurate.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.4 There is no substantial change to the law.

Why is it being changed?

- 7.5 We are updating the list of bodies in Schedule 1 to the Act to which the Act applies.

What will it now do?

- 7.6 The Act will apply to the bodies which have been added.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There is no consolidation proposed.

10. Consultation outcome

- 10.1 In accordance with section 4(7)(a) of the Act, the Welsh Ministers were consulted in respect of those bodies and offices added to Schedule 1 to the Act by the Adding Order whose functions are exercisable only or mainly in or as regards Wales. The First Minister confirmed that the Welsh Ministers were content on 10 June 2022.

11. Guidance

- 11.1 There is no associated guidance.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. 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 Minister for the Cabinet Office or the Secretary of State. Costs for disbursements can be recovered. It is unlikely the volume of requests received by the bodies being added to Schedule 1 to the Act will result in significant new costs.
- 12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no impact on business, charities or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that this is done by the Information Commissioner who is the independent regulator for the Act.

15. Contact

15.1 Julianne Peterson at the Cabinet Office Telephone: 0207 277 1588 or email: Julianne.Peterson@Cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eirian Walsh Atkins, Deputy Director for FOI and Transparency, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord True, Minister of State at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.