

EXPLANATORY MEMORANDUM TO
THE FREEDOM OF INFORMATION (REMOVAL OF REFERENCES TO PUBLIC
AUTHORITIES) ORDER 2023

2023 No. 392

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Freedom of Information (Removal of References to Public Authorities) Order 2023 (“the Order”) removes references to public authorities from Part 6 of Schedule 1 to the Freedom of Information Act 2000 (“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 4(3) of the Act which set out the criteria for inclusion within Schedule 1 to 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.

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 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 As the instrument is not subject to parliamentary procedure, no statement is required.

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, set out in section 4(2) and 4(3) of the Act:
- 6.2 Section 4(2): that the body or office is established by His 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 Section 4(4) of the Act provides that if either of the statutory criteria in section 4(2) or 4(3) ceases to be satisfied as respects to any body listed in part 6 or 7 of Schedule 1, the body ceases to be a public authority for the purposes of the Act by virtue of the entry in question.
- 6.5 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:
- 6.6 Section 4(5)(a): ceased to exist, or
- 6.7 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.
- 6.8 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 4(3). The Order is the ninth 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.
- 7.2 The Order removes thirty-four bodies from the scope of the Act. These bodies have ceased to exist or ceased to satisfy the statutory criteria for a public authority under sections 4(2) and 4(3) 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?

- 7.3 There is no substantial change to the law.

Why is it being changed?

- 7.4 We are updating the list of bodies to which the Act applies, as set out in Schedule 1 to the Act.

What will it now do?

- 7.5 Schedule 1 to the Act will be updated to remove references to bodies to which the Act no longer applies.

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 Not applicable.

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.

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 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 276 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 Baroness Neville-Rolfe at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.