



Freedom of Information (Scotland) Act 2002

2002 asp 13

PART 5

HISTORICAL RECORDS

57 The expression “historical record”

[^{F1}(1) For the purposes of this Part, a record becomes a “historical record” in accordance with subsections (1A) to (1C).]

[^{F1}(1A) A record becomes one at the end of the period of 15 years beginning with 1st January in the calendar year following the date on which the record is created.

(1B) A record containing information which would be exempt by virtue of section 36 becomes one at the end of the period of 30 years beginning with 1st January in the calendar year following the date on which the record is created.

(1C) A record containing information which would be exempt by virtue of section 41(a) becomes one at the end of the later-ending of—

- (a) the period of 20 years beginning with the date on which the record is created,
- (b) the period of 5 years beginning with—
 - (i) in relation to communications with Her Majesty, the date of the death of Her Majesty,
 - (ii) in relation to communications with another member of the Royal Family, the date of the death of that member,
 - (iii) in relation to communications with the Royal Household, the date of the death of the Sovereign reigning when the record is created.

(1D) In the application of subsections (1A) to (1C)—

- (a) the general rule in subsection (1A) is subject to the operation of subsections (1B) and (1C) so far as relevant,
- (b) a record to which both subsections (1B) and (1C) relate becomes a historical record at the end of the later-ending of—
 - (i) the period provided for in subsection (1B),

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(ii) the period provided for in subsection (1C)(b).]

- (2) Where records created at different dates are for administrative purposes kept together in one file or other assemblage, all the records in that file or assemblage are to be treated for the purposes of this Part as created when the latest of those records is created.

Textual Amendments

- F1** S. 57(1)-(1D) substituted for s. 57(1) (1.4.2014) by The Freedom of Information (Scotland) Act 2002 (Historical Periods) Order 2013 (S.S.I. 2013/365), arts. 1, 2

58 Falling away of exemptions with time

- (1) Information contained in a historical record cannot be exempt information by virtue of any of sections 28 to 30, 33(1), 36, 37, 40 and 41(a).
- (2) Information cannot be exempt information by virtue of—
- (a) section 41(b) after the end of that period of sixty years; or
 - (b) section 34(2)(b), 35 or 38(1)(c) or (d) after the end of that period of one hundred years,

which commences at the beginning of the calendar year following that in which the record containing the information is created.

59 Power to vary periods mentioned in sections 57 and 58

- (1) The Scottish Ministers may by order amend ^{F2}... paragraph (a) or (b) of subsection (2) of section 58 so as to substitute for the number of years for the time being mentioned in the provision in question such other number of years (not being a number which exceeds that mentioned in the provision as originally enacted) as may be specified in the order.

[^{F3}(1A) The Scottish Ministers may by order—

- (a) make provision modifying any enactment in accordance with which a record becomes a “historical record” for the purposes of this Part, and
- (b) do so by amending this Part or otherwise.

(1B) Provision by virtue of subsection (1A) may (in particular) state that a record becomes such a “historical record”

- (a) in relation to the exemption under section 41(a), at the end of—
 - (i) a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date, or
 - (ii) a specified period (not exceeding 30 years) beginning with the occurrence of an event apart from the creation of the record,
- (b) in relation to any other exemption under Part 2, at the end of a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date.

(1C) An order under subsection (1) or (1A) may make different provision for—

- (a) records of different descriptions,

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- (b) exemptions of different kinds,
 - (c) different purposes in other respects.]
- (2) An order under subsection (1) [F4 or] may contain such [F5 supplemental, incidental, consequential, transitional, transitory or saving provision] as the Scottish Ministers think fit.

Textual Amendments

- F2** Words in s. 59(1) repealed (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 4(1)(a), 7; S.S.I. 2013/136, art. 2
- F3** S. 59(1A)-(1C) inserted (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 4(1)(b), 7; S.S.I. 2013/136, art. 2
- F4** Words in s. 59(2) inserted (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 4(1)(c)(i), 7; S.S.I. 2013/136, art. 2
- F5** Words in s. 59(2) substituted (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 4(1)(c)(ii), 7; S.S.I. 2013/136, art. 2

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