



# Freedom of Information (Scotland) Act 2002 2002 asp 13

## PART 7

### MISCELLANEOUS AND SUPPLEMENTAL

#### **62 Power to make provision relating to environmental information**

- (1) In this section “the Aarhus Convention” means the Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters signed at Aarhus on 25th June 1998.
- (2) For the purposes of this section, “the information provisions” of the Aarhus Convention are Article 4, together with Articles 3 and 9 so far as relating to that Article.
- (3) The Scottish Ministers may, in relation to information held by or requested from any Scottish public authority, by regulations make such provision as they consider appropriate—
  - (a) for the purpose of implementing the information provisions of the Aarhus Convention or any amendment of those provisions made in accordance with Article 14 of the Convention; and
  - (b) for the purpose of dealing with matters arising out of, or related to, the implementation of those provisions or of any such amendment.
- (4) Regulations under subsection (3) may in particular—
  - (a) enable charges to be made for making information available in accordance with the regulations;
  - (b) provide that any obligation imposed by the regulations in relation to the disclosure of information is to have effect notwithstanding any enactment or rule of law;
  - (c) make provision for the issue by the Scottish Ministers of a code of practice;
  - (d) provide for sections 43 and 44 to apply in relation to such a code with such modifications as may be specified in the regulations;

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- (e) provide for all or any of the provisions of Part 4 to apply, with such modifications as may be so specified, in relation to compliance with any requirement of the regulations; and
- (f) contain such transitional or consequential provision (including provision modifying any enactment) as the Scottish Ministers consider appropriate.

### 63 Disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner

The Commissioner may disclose to—

- (a) the Scottish Public Services Ombudsman any information obtained by, or furnished to, the Commissioner under or for the purposes of this Act if it appears to the Commissioner that the information relates to a matter which is, or could be, the subject of an investigation by the Ombudsman under the Scottish Public Services Ombudsman Act 2002 (asp 11); or
- (b) the Information Commissioner any information so obtained or furnished if it appears to the Commissioner that the information so relates as is mentioned in paragraph (a) or (b) of section 11AA(1) of the Parliamentary Commissioner Act 1967 (c.13) (disclosure of information by Parliamentary Commissioner to Information Commissioner).

#### Modifications etc. (not altering text)

- C1 S. 63 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), [reg 18\(5\)\(6\)](#) (with reg. 3)
- C2 S. 63 applied (31.12.2009) by [The INSPIRE \(Scotland\) Regulations 2009 \(S.S.I. 2009/440\)](#), [reg. 12\(3\)](#), Sch.

### 64 Power to amend or repeal enactments prohibiting disclosure of information

- (1) If it appears to the Scottish Ministers that by virtue of section 26(a) a relevant enactment is capable of preventing the disclosure of information under section 1, they may by order repeal or amend that enactment, in so far as it relates to any Scottish public authority, so as to remove or relax the prohibition.
- (2) In subsection (1)—
  - “relevant enactment” means an Act of Parliament, or Act of the Scottish Parliament, which receives Royal Assent before the end of the calendar year in which this Act receives Royal Assent or any subordinate legislation made before the date on which this Act receives Royal Assent; and
  - “information” includes unrecorded information.
- (3) An order under subsection (1) may do all or any of the following—
  - (a) make such modifications of enactments as, in the opinion of the Scottish Ministers, are consequential upon, or incidental to, the repeal or amendment of the relevant enactment;
  - (b) contain such transitional provisions and savings as appear to them to be appropriate;
  - (c) make different provision in relation to different cases.

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## **65 Offence of altering etc. records with intent to prevent disclosure**

- (1) Where—
  - (a) a request for information is made to a Scottish public authority; and
  - (b) the applicant is, under section 1, entitled to be given the information or any part of it,a person to whom this subsection applies who, with the intention of preventing the disclosure by the authority of the information, or part, to which the entitlement relates, alters, defaces, blocks, erases, destroys or conceals a record held by the authority, is guilty of an offence.
- (2) Subsection (1) applies to the authority and to any person who is employed by, is an officer of, or is subject to the direction of, the authority.
- (3) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

### **[<sup>F1</sup>65A Time limit for proceedings**

- (1) Proceedings for an offence under section 65(1) may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor's knowledge.
- (2) No such proceedings may be commenced more than 3 years—
  - (a) after the commission of the offence, or
  - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.
- (4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in subsection (1) came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).
- (5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it does for those of that section.]

#### **Textual Amendments**

- F1** S. 65A inserted (31.5.2013) by [Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(asp 2\)](#), ss. 5, 7; S.S.I. 2013/136, art. 2 (with art. 3)

## **66 Saving for existing powers of disclosure**

Nothing in this Act is to be taken to limit the powers of a Scottish public authority to disclose information held by it.

## **67 Protection from actions for defamation**

Where, in compliance with a request for information, information supplied to a Scottish public authority by a third party is communicated by the authority, under

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section 1, to the applicant, the publication to the applicant of any defamatory matter contained in the information so supplied is privileged unless that publication is shown to have been made with malice.

**68 Scottish Parliament and Scottish Administration**

Section 65 and paragraph 10 of schedule 3 apply to—

- (a) a member of the staff of, or a person acting on behalf of, the Parliament or the Parliamentary corporation; or
- (b) a member of the staff of the Scottish Administration,

as they apply to any other person; but none of those bodies is liable to prosecution under this Act.

**69 Exercise of rights by children**

(1) Where a question falls to be determined as to the legal capacity of a person who has not attained the age of sixteen years to exercise any right conferred by any provision of this Act, any such person is to be taken to have that capacity who has a general understanding of what it means to exercise the right.

(2) Without prejudice to the generality of subsection (1), a person who has attained the age of twelve years is to be presumed to be of sufficient age and maturity to have such understanding as is mentioned in that subsection.

**70 Amendment of Public Records (Scotland) Act 1937**

(1) The Public Records (Scotland) Act 1937 (c.43) is amended as follows.

<sup>F2</sup>(2) .....

(3) After section 12 there is inserted—

**“12A Duty to afford facilities for inspection etc. of certain records**

It shall be the duty of the Keeper to arrange that reasonable facilities are available to the public for—

- (a) inspecting; and
- (b) obtaining copies of,

such records held by the Keeper as either fall to be disclosed in accordance with the Freedom of Information (Scotland) Act 2002 (asp 13) or comprise information which is exempt information (within the meaning of that Act) by virtue of section 25(2)(b)(ii) of that Act.”.

**Textual Amendments**

**F2** S. 70(2) repealed (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), [ss. 4\(5\)\(a\)](#), [134\(7\)](#); [S.S.I. 2010/221](#), [art. 3\(2\)](#), [sch.](#)

**Commencement Information**

**II** S. 70 partly in force; s. 70 not in force at Royal Assent see s. 75(1); s. 70(1)(2) in force at 30.9.2002 by [S.S.I. 2002/437](#), [art. 2](#)

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## 71 Amendment of Scottish Public Services Ombudsman Act 2002

- (1) In Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (persons listed as liable to investigation under that Act), after paragraph 45 there is inserted—

“45A The Scottish Information Commissioner.”.

- (2) Schedule 4 to this Act, which contains amendments to that Act consequential on the provisions of this Act, has effect.

## 72 Orders and regulations

- (1) Any power of the Scottish Ministers to make an order or regulations under this Act is exercisable by statutory instrument.

- (2) A statutory instrument—

- (a) made in exercise of any of the powers conferred by sections 4(1) (except in the case mentioned in subsection (3)), 13(1) or 62(3) is subject to annulment in pursuance of a resolution of the Parliament;
- (b) containing an order under section 4(1) (but only in the case so mentioned), 5(1), 7(2) or (4)(b), 59(1) [<sup>F3</sup> or (1A) ] or 64(1) or regulations under section 9(4), 10(4), 12, 20(7), 21(6) or 47(6) is not made unless a draft of the instrument has been—
- (i) laid before; and
- (ii) approved by resolution of, the Parliament.

- (3) The case is that the instrument contains an order under paragraph (a) of section 4(1) and lists an authority in the way mentioned in section 7(1).

### Textual Amendments

**F3** Words in s. 72(2)(b) inserted (31.5.2013) by Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), ss. 4(2), 7; S.S.I. 2013/136, art. 2

## 73 Interpretation

In this Act, unless the context requires a different interpretation—

- “the Commissioner” means the Scottish Information Commissioner;
- “body” includes an unincorporated association;
- “decision notice” has the meaning given by section 49(5);
- “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
- “enforcement notice” has the meaning given by section 51(1);
- “exempt information” means information which is so described in any provision of Part 2;
- “fees notice” has the meaning given by section 9(1);
- “information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

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“information notice” has the meaning given by section 50(1);  
 “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c.26);  
 “the Parliamentary corporation” means the Scottish Parliamentary Corporate Body;  
 “publication scheme” has the meaning given by section 23(1)(a);  
 “refusal notice” has the meaning given by section 16(1) (including that section as read with section 18(2));  
 “requirement for review” has the meaning given by section 20(2);  
 “Scottish public authority” has the meaning given by section 3(1);  
 “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c.30) but includes an instrument made under an Act of the Scottish Parliament; and  
 “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971 (c.80), is a bank holiday in Scotland.

#### **74 Giving of notice etc.**

- (1) In this Act, any reference to—
- (a) a notice being given is to be construed as a reference to its being—
    - (i) delivered; or
    - (ii) posted; and
  - (b) a request for information, a requirement for review or an application being made, or a certificate being given, is to be construed as a reference to its being—
    - (i) delivered;
    - (ii) posted; or
    - (iii) transmitted by electronic means.
- (2) For the purposes of any provision of this Act, a thing—
- (a) posted is presumed not to be received until the third day after the day of posting; and
  - (b) transmitted by electronic means is presumed to be received on the day of transmission.

#### **75 Commencement**

- (1) This section and sections 72 and 76 come into force on Royal Assent; and the other provisions of this Act come into force—
- (a) on such day as the Scottish Ministers may by order appoint, that day being, subject to paragraph (b), a day no later than 31st December 2005; or
  - (b) if the Commissioner recommends to the Scottish Ministers that a day after 31st December 2005 and specified in the recommendation be so appointed and they accept that recommendation, then on the specified day as so appointed, and different days may be so appointed (or as the case may be recommended and appointed) for different provisions, for different persons or categories of person and for different purposes.

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(2) An order under paragraph (b) of subsection (1) may contain such transitional provisions and savings (including provisions capable of having effect after the coming into force of provisions of this Act other than this section and sections 72 and 76) as the Scottish Ministers consider appropriate.

(3) During—

- (a) that period of twelve months which begins with the date of Royal Assent; and
- (b) each subsequent period of twelve months until all the provisions of this Act are fully in force,

the Scottish Ministers are to prepare, and lay before the Parliament, a report of their proposals (including their response to any recommendations made under subsection (1)(b)) for bringing fully into force the provisions of this Act.

#### **Subordinate Legislation Made**

- P1** S. 75(1) power partly exercised: 30.9.2002 appointed for specified provisions by [S.S.I. 2002/437](#), **art. 2**;
- S. 75(1) power partly exercised: 31.10.2003 appointed for specified provisions by [{S.S.I. 2003/477}](#), art. 3;
- S. 75(1) power fully exercised: 30.4.2004 appointed for specified provisions and 1.1.2005 appointed for all remaining provisions by [{S.S.I. 2004/203}](#), art. 3, Sch.

## **76 Short title**

This Act may be cited as the Freedom of Information (Scotland) Act 2002.

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