



Freedom of Information (Scotland) Act 2002 2002 asp 13

PART 1

ACCESS TO INFORMATION HELD BY SCOTTISH PUBLIC AUTHORITIES

Right to information

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant”.
- (3) If the authority—
 - (a) requires further information in order to identify and locate the requested information; and
 - (b) has told the applicant so (specifying what the requirement for further information is),then, provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.
- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
- (5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).
- (6) This section is subject to sections 2, 9, 12 and 14.

Status: Point in time view as at 27/05/2020.

Changes to legislation: Freedom of Information (Scotland) Act 2002, Part 1 is up to date with all changes known to be in force on or before 08 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that—
 - (a) the provision does not confer absolute exemption; and
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
- (2) For the purposes of paragraph (a) of subsection (1), the following provisions of Part 2 (and no others) are to be regarded as conferring absolute exemption—
 - (a) section 25;
 - (b) section 26;
 - (c) section 36(2);
 - (d) section 37; and
 - (e) in subsection (1) of section 38—
 - (i) paragraphs (a), (c) and (d); and
 - (ii) paragraph (b) where the first condition referred to in that paragraph is satisfied^{F1}....

Textual Amendments

F1 Words in s. 2(2)(e)(ii) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 89](#) (with ss. 117, 209, 210, [Sch. 20 para. 36](#)); S.I. 2018/625, reg. 2(1)(g)

3 Scottish public authorities

- (1) In this Act, “Scottish public authority” means—
 - (a) any body which, any other person who, or the holder of any office which—
 - (i) is listed in schedule 1; or
 - (ii) is designated by order under section 5(1); or
 - (b) a publicly-owned company, as defined by section 6.
- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held—
 - (a) by the authority otherwise than—
 - (i) on behalf of another person; or
 - (ii) in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom; or
 - (b) by a person other than the authority, on behalf of the authority.
- (3) Subsection (1)(a)(i) is subject to any qualification set out in schedule 1.
- (4) Information is not held by the Keeper of the Records of Scotland if it is contained in a record transferred to the Keeper by a public authority within the meaning of the Freedom of Information Act 2000 (c.36) unless it is information—
 - (a) to which subsections (2) to (5) of section 22 apply by virtue of subsection (6) of that section; or
 - (b) designated by that authority as open information for the purposes of this subsection.

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- (5) Where the public authority mentioned in subsection (4) is the Secretary of State for Scotland and the information is contained in a record transferred as is mentioned in subsection (6) of section 22 the reference in subsection (4)(b) to “that authority” is to be construed as a reference to the Scottish Ministers.

Commencement Information

- II** S. 3 partly in force; s. 3 not in force at Royal Assent see s. 75(1); s. 3(1) in force at 30.9.2002 by [S.S.I. 2002/437](#), [art. 2](#)

4 Amendment of schedule 1

- (1) The Scottish Ministers may by order amend schedule 1 by—
- (a) adding to that schedule a reference to—
 - (i) any body which; or
 - (ii) the holder of any office which,
is not for the time being listed there and is either a part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions; or
 - (b) removing from that schedule an entry for the time being listed there.
- (2) The reference in paragraph (a) of subsection (1) to an authority with mixed functions or no reserved functions is to be construed in accordance with paragraphs 1(4) and 2 of Part III of Schedule 5 to the Scotland Act 1998 (c.46).
- (3) An order under subsection (1) may relate to a specified person or office or to persons or offices falling within a specified description.

5 Further power to designate Scottish public authorities

- (1) The Scottish Ministers may by order designate as a Scottish public authority for the purposes of this Act any person mentioned in subsection (2) who—
- (a) is neither for the time being listed in schedule 1 nor capable of being added to that schedule by order under section 4(1); and
 - (b) is neither a public body nor the holder of any public office.
- (2) The persons are those who either—
- (a) appear to the Scottish Ministers to exercise functions of a public nature; or
 - (b) are providing, under a contract made with a Scottish public authority, any service whose provision is a function of that authority.
- (3) An order under subsection (1) may designate a specified person or persons falling within a specified description.
- (4) An order under subsection (1) made by virtue of—
- (a) subsection (2)(a) must specify the functions of a public nature which appear to be exercised;
 - (b) subsection (2)(b) must specify the service being provided.
- [^{F2}(5) Before making an order under subsection (1), the Scottish Ministers must—
- (a) consult—

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- (i) every person to whom the order relates, or
- (ii) persons appearing to them to represent such persons, and
- (b) also consult such other persons as they consider appropriate.]

Textual Amendments

F2 S. 5(5) substituted (31.5.2013) by [Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(asp 2\)](#), ss. 1(1), 7; S.S.I. 2013/136, art. 2

6 Publicly-owned companies

- (1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if it is wholly owned—
 - (a) by the Scottish Ministers; or
 - (b) by any other Scottish public authority listed in schedule 1, other than an authority so listed only in relation to information of a specified description.
- (2) For the purposes of subsection (1), a company is wholly owned—
 - (a) by the Scottish Ministers if it has no members except—
 - (i) the Scottish Ministers or companies wholly owned by the Scottish Ministers; or
 - (ii) persons acting on behalf of the Scottish Ministers or of such companies; and
 - (b) by any other Scottish public authority if it has no members except—
 - (i) the authority or companies wholly owned by the authority; or
 - (ii) persons acting on behalf of the authority or of such companies.
- (3) In subsections (1) and (2), “company” includes any body corporate.

7 Public authorities to which Act has limited application

- (1) An order under section 4(1)(a) may, in adding an entry to schedule 1, list the authority only in relation to information of a specified description; and where an authority is so listed nothing in this Act applies to any other information held by the authority.
- (2) The Scottish Ministers may by order amend that schedule—
 - (a) by limiting the entry relating to an authority to information of a specified description; or
 - (b) by removing or amending any such limitation for the time being contained in an entry so relating.
- (3) Nothing in this Act applies to information held by a person designated as a Scottish public authority by order under subsection (1) of section 5 if the order is made by virtue of—
 - (a) subsection (2)(a) of that section and the information does not relate to the functions; or
 - (b) subsection (2)(b) of that section and the information does not relate to the service,
specified in the order.
- (4) Nothing in this Act applies in relation to information—

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- (a) held by a publicly-owned company; and
- (b) of a description specified in relation to that company in an order made for the purposes of this subsection by the Scottish Ministers.

[^{F3}7A] Reports on section 5 power

- (1) In accordance with this section, the Scottish Ministers must lay before the Parliament reports about the exercise of the section 5 power.
- (2) The first report is to be laid on or before 31 October 2015.
- (3) Each subsequent report is to be laid no later than 2 years after the date on which the previous report is laid.
- (4) A report must—
 - (a) state whether the section 5 power has been exercised during the reporting period, and
 - (b) as the case may be—
 - (i) explain how the power has been exercised during the reporting period (and why), or
 - (ii) give the reason for leaving the power unexercised during the reporting period.
- (5) A report may—
 - (a) summarise any response to a consultation carried out during the reporting period as regards the exercise of the section 5 power,
 - (b) indicate any intention to exercise the power in the future,
 - (c) include such additional information as the Scottish Ministers consider appropriate.
- (6) In this section—

“reporting period” means—

 - (a) in the case of the first report, period of time from the date on which section 1 of the Freedom of Information (Amendment) (Scotland) Act 2013 comes into force until the date on which the first report is laid,
 - (b) in the case of a subsequent report, period of time from the date on which the previous report is laid until the date on which the subsequent report is laid,

“section 5 power” means order-making power conferred by section 5(1).]

Textual Amendments

F3 S. 7A inserted (31.5.2013) by [Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(asp 2\)](#), ss. 1(2), 7; S.S.I. 2013/136, art. 2

8 Requesting information

- (1) Any reference in this Act to “requesting” information is a reference to making a request which—

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- (a) is in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes the information requested.
- (2) For the purposes of paragraph (a) of subsection (1) (and without prejudice to the generality of that paragraph), a request is to be treated as made in writing where the text of the request is—
- (a) transmitted by electronic means;
 - (b) received in legible form; and
 - (c) capable of being used for subsequent reference.

9 Fees

- (1) A Scottish public authority receiving a request which requires it to comply with section 1(1) may, within the time allowed by section 10 for so complying, give the applicant a notice in writing (in this Act referred to as a “fees notice”) stating that a fee of an amount specified in the notice is to be charged by the authority for so complying.
- (2) Subsection (1) is subject to section 19.
- (3) If a fees notice is given to the applicant, the authority is not obliged to give the requested information unless the fee is duly paid; and for the purposes of this subsection and section 10(2) due payment is payment within the period of three months beginning with the day on which the notice is given.
- (4) Subject to subsection (7), a fee charged under subsection (1) is to be determined by the authority in accordance with regulations made by the Scottish Ministers.
- (5) Without prejudice to the generality of subsection (4), the regulations may in particular provide that—
- (a) a fee is not to exceed such amount as may be specified in, or determined in accordance with, the regulations;
 - (b) a fee is to be calculated in such manner as may be so specified; and
 - (c) no fee is payable in a case so specified.
- (6) Before making the regulations, the Scottish Ministers are to consult the Commissioner.
- (7) Subsection (4) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.

Commencement Information

- I2** S. 9 wholly in force at 1.1.2005; s. 9 not in force at Royal Assent, see s. 75(1); s. 9 in force for certain purposes at 31.10.2003 by [S.S.I. 2003/477](#), [art 3\(2\)](#); s. 9 wholly in force at 1.1.2005 by [S.S.I. 2004/203](#), [art. 3\(2\)](#)

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10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after—
 - (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
 - (b) in a case where section 1(3) applies, the receipt by it of the further information.
- (2) If—
 - (a) the authority is the Keeper of the Records of Scotland; and
 - (b) the information is information to which section 22(2) to (5) applies,subsection (1) applies with the substitution, for the reference to the twentieth working day, of a reference to the thirtieth working day.
- (3) Where the authority gives a fees notice to the applicant and the fee is duly paid, the working days in the period—
 - (a) beginning with the day on which that notice is given; and
 - (b) ending with the day on which the fee is received by the authority,are to be disregarded in calculating, for the purposes of subsection (1), the twentieth (or as the case may be the thirtieth) working day mentioned in that subsection.
- (4) The Scottish Ministers may by regulations provide that subsections (1) and (3) are to have effect as if references to the twentieth (or as the case may be the thirtieth) working day were references to such other working day, not later than the sixtieth, after receipt by the authority of the request as is specified in, or determined in accordance with, the regulations.
- (5) Regulations under subsection (4) may—
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner, exercisable both at the request of the authority and where no such request has been made.

Modifications etc. (not altering text)

- C1** S. 10(1)(3) modified (1.12.2016) by [The Freedom of Information \(Scotland\) Act 2002 \(Time for Compliance\) Regulations 2016 \(S.S.I. 2016/346\)](#), regs. 1, **2(2)** (with reg. 2(1))

11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.
- (2) The means are—
 - (a) the provision to the applicant, in permanent form or in another form acceptable to the applicant, of a copy of the information;
 - (b) such provision to the applicant of a digest or summary of the information; and
 - (c) the provision to the applicant of a reasonable opportunity to inspect a record containing the information.

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- (3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.
- (4) Subject to subsection (1), information given in compliance with section 1(1) may be given by any means which are reasonable in the circumstances.
- (5) Such tests of reasonable practicability as are imposed by this section are not to be construed as detracting from any duty which a [F4 person has under or by virtue of section 29 of the Equality Act 2010 (provision of services etc)] (duty to make adjustments to practices, policies, procedures or physical features so that use of services by disabled persons is facilitated or made possible).

Textual Amendments

F4 Words in s. 11(5) substituted by 2010 c. 15 Sch. 26 Pt. 2 para. 103 (as inserted) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), [Sch. 1 para. 6](#) (see S.I. 2010/2317, art. 2)

12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.
- (2) The regulations may provide that, in such circumstances as they may specify, where two or more requests for information are made to the authority—
 - (a) by one person;
 - (b) by different persons who appear to it to be acting in concert or whose requests appear to have been instigated wholly or mainly for a purpose other than the obtaining of the information itself; or
 - (c) by different persons in circumstances where the authority considers it would be reasonable to make the information available to the public at large and elects to do so,
 then if the authority estimates that the total cost of complying with both (or all) of the requests exceeds the amount prescribed, in relation to complying with either (or any) of those requests, under subsection (1), section 1(1) does not oblige the authority to comply with either (or any) of those requests.
- (3) The regulations may, in respect of an election made as mentioned in subsection (2)(c), make provision as to the means by which and the time within which the information is to be made available to the public at large.
- (4) The regulations may make provision as to—
 - (a) the costs to be estimated; and
 - (b) the manner in which those costs are to be estimated.
- (5) Before making the regulations, the Scottish Ministers are to consult the Commissioner.

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- (6) References in this section to the cost of complying with a request are not to be construed as including any reference to costs incurred in fulfilling any such duty under or by virtue of the [F5Equality Act 2010] as is mentioned in section 11(5).

Textual Amendments

- F5** Words in s. 12(6) substituted by 2010 c. 15 Sch. 26 Pt. 2 para. 104 (as inserted) (1.10.2010) by [The Equality Act 2010 \(Consequential Amendments, Saving and Supplementary Provisions\) Order 2010 \(S.I. 2010/2279\)](#), art. 1(2), **Sch. 1 para. 6** (see S.I. 2010/2317, art. 2)

Commencement Information

- I3** S. 12 wholly in force at 1.1.2005; s. 12 not in force at Royal Assent, see s. 75(1); s. 12 in force for certain purposes at 30.4.2004 and wholly in force at 1.1.2005 by [S.S.I. 2004/203](#), art. 3, Sch.

13 Fees for disclosure in certain circumstances

- (1) A Scottish public authority may charge for the communication of any information—
- which by virtue of section 12(1) or (2) it is not obliged to communicate; and
 - which it is not otherwise required by law to communicate,
- such fee as may be determined by it in accordance with regulations made by the Scottish Ministers.
- (2) Without prejudice to the generality of subsection (1), the regulations may in particular provide that a fee—
- is not to exceed such amount as may be specified in, or determined in accordance with, the regulations; and
 - is to be calculated in such manner as may be so specified.
- (3) Before making the regulations, the Scottish Ministers are to consult the Commissioner.
- (4) Subsection (1) does not apply where provision is made, by or under any enactment, as to the fee that may be charged by the authority for the disclosure of the information.

14 Vexatious or repeated requests

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the request is vexatious.
- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.

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- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

Responses to request

16 Refusal of request

- (1) Subject to section 18, a Scottish public authority which, in relation to a request for information which it holds, to any extent claims that, by virtue of any provision of Part 2, the information is exempt information must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice in writing (in this Act referred to as a “refusal notice”) which—
- (a) discloses that it holds the information;
 - (b) states that it so claims;
 - (c) specifies the exemption in question; and
 - (d) states (if not otherwise apparent) why the exemption applies.
- (2) Where the authority’s claim is made only by virtue of a provision of Part 2 which does not confer absolute exemption, the notice must state the authority’s reason for claiming that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs that in disclosure of the information.
- (3) The authority is not obliged to make a statement under subsection (1)(d) in so far as the statement would disclose information which would itself be exempt information.
- (4) A Scottish public authority which, in relation to a request for information, claims that section 12(1) applies must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant a notice which states that it so claims.
- (5) A Scottish public authority which, in relation to such a request, claims that section 14 applies must, within that time, give the applicant a notice which states that it so claims; except that the notice need not be given if—
- (a) the authority has, in relation to a previous identical or substantially similar such request, given the applicant a notice under this subsection; and
 - (b) it would in all the circumstances be unreasonable to expect it to serve a further such notice in relation to the current request.
- (6) Subsections (1), (4) and (5) are subject to section 19.

17 Notice that information is not held

- (1) Where—
- (a) a Scottish public authority receives a request which would require it either—
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
 if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
- it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

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- (2) Subsection (1) is subject to section 19.
- (3) Subsection (1) does not apply if, by virtue of section 18, the authority instead gives the applicant a refusal notice.

18 Further provision as respects responses to request

- (1) Where, if information existed and was held by a Scottish public authority, the authority could give a refusal notice under section 16(1) on the basis that the information was exempt information by virtue of any of sections 28 to 35 [^{F6}38,] 39(1) or 41 but the authority considers that to reveal whether the information exists or is so held would be contrary to the public interest, it may (whether or not the information does exist and is held by it) give the applicant a refusal notice by virtue of this section.
- (2) Neither paragraph (a) of subsection (1) of section 16 nor subsection (2) of that section applies as respects a refusal notice given by virtue of this section.

Textual Amendments

- F6** Word in s. 18(1) inserted (31.5.2013) by [Freedom of Information \(Amendment\) \(Scotland\) Act 2013 \(asp 2\)](#), **ss. 2, 7**; [S.S.I. 2013/136](#), **art. 2**

Content of certain notices

19 Content of certain notices

A notice under section 9(1) or 16(1), (4) or (5) (including a refusal notice given by virtue of section 18(1)) or 17(1) must contain particulars—

- (a) of the procedure provided by the authority for dealing with complaints about the handling by it of requests for information; and
- (b) about the rights of application to the authority and the Commissioner conferred by sections 20(1) and 47(1).

Review of refusal, etc.

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.
- (2) A requirement under subsection (1) is referred to in this Act as a “requirement for review”.
- (3) A requirement for review must—
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify—

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- (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant’s dissatisfaction mentioned in subsection (1).
- (4) For the purposes of paragraph (a) of subsection (3) (and without prejudice to the generality of that paragraph), a requirement for review is treated as made in writing where the text of the requirement is as mentioned in paragraphs (a) to (c) of section 8(2).
- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after—
- (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
 - (b) in a case where the authority purports under this Act—
 - (i) to comply with a request for information; or
 - (ii) to give the applicant a fees notice, a refusal notice or a notice under section 17(1) that information is not held,
 but does so outwith that time, the receipt by the applicant of the information provided or, as the case may be, the notice.
- (6) A Scottish public authority may comply with a requirement for review made after the expiry of the time allowed by subsection (5) for making such a requirement if it considers it appropriate to do so.
- (7) The Scottish Ministers may by regulations provide that subsections (5) and (6) are to have effect as if the reference in subsection (5) to the fortieth working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (8) Regulations under subsection (7) may—
- (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (9) In subsection (1), the reference to “actions” and “decisions” includes inaction and failure to reach a decision.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the [F7]twentieth][F7]sixtieth working day after receipt by it of the requirement.
- (2) If—
- (a) the authority is the Keeper of the Records of Scotland; and
 - (b) a different authority is, by virtue of section 22(4), to review a decision to which the requirement relates,
- subsection (1) applies with the substitution, for the reference to the [F8]twentieth][F8]sixtieth working day, of a reference to the [F9]thirtieth][F9]seventieth working day.

Status: Point in time view as at 27/05/2020.

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- (3) A requirement for review may be withdrawn by the applicant who made it, by notice in writing to the authority, at any time before the authority makes its decision on the requirement.
- (4) The authority may, as respects the request for information to which the requirement relates—
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.
- (6) The Scottish Ministers may by regulations provide that subsections (1) and (5) and section 47(4)(b) are to have effect as if the reference in subsection (1) to the twentieth (or as the case may be the thirtieth) working day were a reference to such other working day as is specified in (or determined in accordance with) the regulations.
- (7) Regulations under subsection (6) may—
 - (a) prescribe different days in relation to different cases; and
 - (b) confer a discretion on the Scottish Information Commissioner.
- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if—
 - (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.
- (10) A notice under subsection (5) or (9) must contain particulars about the rights of application to the Commissioner and of appeal conferred by sections 47(1) and 56.

Textual Amendments

- F7** Word in s. 21(1) substituted (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020](#) (asp 7), s. 17(1), [sch. 6 para. 3\(2\)\(a\)](#) (with ss. 11-13)
- F8** Word in s. 21(2) substituted (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020](#) (asp 7), s. 17(1), [sch. 6 para. 3\(2\)\(b\)\(i\)](#) (with ss. 11-13)
- F9** Word in s. 21(2) substituted (temp.) (7.4.2020) by virtue of [Coronavirus \(Scotland\) Act 2020](#) (asp 7), s. 17(1), [sch. 6 para. 3\(2\)\(b\)\(ii\)](#) (with ss. 11-13)

Modifications etc. (not altering text)

- C2** S. 21(1) modified (1.12.2016) by [The Freedom of Information \(Scotland\) Act 2002 \(Time for Compliance\) Regulations 2016](#) (S.S.I. 2016/346), regs. 1, [2\(2\)](#) (with reg. 2(1))

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Records transferred to the Keeper of the Records of Scotland

22 Special provisions relating to records transferred to Keeper

- (1) Subsections (2) to (5) apply to information which—
 - (a) is contained in a record transferred to the Keeper of the Records of Scotland by a Scottish public authority; and
 - (b) has not been designated by the authority as open information for the purposes of this section.
- (2) The Keeper must, as soon as practicable after receiving a request for information to which this subsection applies, send a copy of that request to the authority which transferred the information; and it is for the authority, instead of the Keeper, to come to a decision as to whether the information is exempt information by virtue of any provision of Part 2 and to determine any question then arising by virtue of paragraph (a) or (b) of section 2(1) as respects the information.
- (3) After receiving the copy, the authority must, within such time as will make it practicable for the Keeper to comply with section 10 as respects the request, inform the Keeper of the decision mentioned in subsection (2) and of any determination required by virtue of that decision.
- (4) The Keeper must, as soon as practicable after receiving a requirement for review in which the specification under section 20(3)(c)(ii) relates to a decision made by the authority by virtue of subsection (2), send a copy of that requirement to the authority; and it is for the authority, instead of the Keeper, to review the decision and to do anything which is to be done under section 21(4).
- (5) After receiving the requirement, the authority must, within such time as will make it practicable for the Keeper to comply with subsection (5) of section 21 as respects the requirement, inform the Keeper of what it has done under subsection (4) of that section and provide a statement of its reasons for so doing; and it is that information and statement which the Keeper shall, in the notice in writing, give in so complying.
- (6) Subsections (2) to (5) also apply to information which is contained in a record transferred to the Keeper, before 1st July 1999, by the Secretary of State for Scotland and is not designated by the Scottish Ministers as open information for the purposes of section 3(4); but for the purposes of that application references in subsections (2) to (5) to “the authority” are to be construed as references to the Scottish Ministers.

Publication schemes

23 Publication schemes

- (1) A Scottish public authority must—
 - (a) adopt and maintain a scheme (in this Act referred to as a “publication scheme”) which relates to the publication of information by the authority and is approved by the Commissioner;
 - (b) publish information in accordance with that scheme; and
 - (c) from time to time review that scheme.
- (2) A publication scheme must specify—
 - (a) classes of information which the authority publishes or intends to publish;

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- (b) the manner in which information of each class is, or is intended to be, published; and
 - (c) whether the published information is, or is intended to be, available to the public free of charge or on payment.
- (3) In adopting or reviewing its publication scheme the authority must have regard to the public interest in—
- (a) allowing public access to information held by it and in particular to information which—
 - (i) relates to the provision of services by it, the cost to it of providing them or the standards attained by services so provided; or
 - (ii) consists of facts, or analyses, on the basis of which decisions of importance to the public have been made by it;
 - (b) the publication of reasons for decisions made by it.
- (4) The authority must publish its publication scheme but may do so in such manner as it thinks fit.
- (5) The Commissioner may—
- (a) when approving a publication scheme, provide that the approval expires at the end of a specified period; and
 - (b) at any time give notice to an authority revoking, as from the end of the period of six months beginning at that time, approval of its publication scheme.
- (6) The Commissioner, when—
- (a) refusing to approve a proposed publication scheme; or
 - (b) revoking approval of a publication scheme,
- must state the reason for doing so.

Commencement Information

- I4** [S. 23](#) wholly in force at 1.1.2005; [s. 23](#) not in force at Royal Assent, see [s. 75\(1\)](#); [s. 23](#) in force for certain purposes at 31.10.2003 by [S.S.I. 2003/477](#), [art 3\(3\)](#); [s. 23](#) wholly in force at 1.1.2005 by [S.S.I. 2004/203](#), [art. 3\(2\)](#)

24 Model publication schemes

- (1) The Commissioner may, in relation to Scottish public authorities falling within particular classes—
- (a) prepare and approve model publication schemes; or
 - (b) approve such schemes prepared by other persons.
- (2) If an authority which falls within the class to which an approved model publication scheme relates adopts that scheme without modification, no further approval of the Commissioner is required so long as that model scheme remains approved; but the approval of the Commissioner is required in relation to any modification of the scheme by an authority.
- (3) The Commissioner may—
- (a) when approving a model publication scheme, provide that the approval expires at the end of a specified period; and

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- (b) at any time publish, in such manner as the Commissioner thinks fit, a notice revoking, as from the end of the period of six months beginning at that time, approval of such a scheme.
- (4) The Commissioner, when—
- (a) refusing to approve—
 - (i) under subsection (1)(b), a proposed model scheme; or
 - (ii) any such modification as is mentioned in subsection (2),must state the reason for doing so; or
 - (b) revoking approval of a model publication scheme, must include in the notice under subsection (3)(b) a statement of the reason for doing so.

Status:

Point in time view as at 27/05/2020.

Changes to legislation:

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