

SCHEDULE

Regulation 12(1)

MODIFICATIONS OF PROVISIONS OF THE FREEDOM OF INFORMATION
(SCOTLAND) ACT 2002 SPECIFIED IN REGULATION 12(2)

1.—(1) In the provisions specified in regulation 12(2), after each reference to “Scottish public authority” or “authority” insert “or third party”.

(2) In those provisions as modified by this Schedule—

- (a) any reference to “Scottish public authority” or “authority” is a reference to a Scottish public authority as defined in these Regulations;
- (b) any reference to “third party” is a reference to a third party as defined in these Regulations; and
- (c) “the 2009 Regulations” means these Regulations.

2. In section 47—

(a) for subsection (1), substitute—

“(1) A person may make application to the Commissioner for a decision whether, in any respect specified in the application, a Scottish public authority or third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations.”;

- (b) omit paragraph (c) of subsection (2); and
- (c) omit subsections (4) to (7).

3. In section 48—

- (a) for “a request for review made to” substitute “an act of”; and
- (b) for “information requested is held”, substitute “act was carried out”.

4. In section 49—

(a) at the end of subsection (1), insert—

“; or

(c) the applicant has not exhausted the complaints procedure provided by the Scottish public authority or third party under regulation 14 of the 2009 Regulations”;

(b) in subsection (6)—

- (i) for the words from “that authority” to “Act”, substitute “a Scottish public authority or third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”; and
- (ii) for paragraphs (a) and (b), substitute—

“(a) the steps which must be taken by the Scottish public authority or third party for rectifying the incompatibility;” and

(c) subsection (9) is omitted.

5. In section 50(1)—

- (a) for sub-paragraphs (i) and (ii) of paragraph (b), substitute “for the purpose of determining whether a Scottish public authority or a third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations” and
- (b) for “to compliance with this Act or to conformity with the code of practice”, substitute “or to the purpose specified in paragraph (b),”.

6. In section 51—

Status: This is the original version (as it was originally made).

- (a) in subsection (1), for “failed to comply with a provision of Part 1 of this Act” substitute “acted in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”;
 - (b) in subsection (2)(a), for the words after “provision” substitute “of the 2009 Regulations with which the Commissioner is satisfied that the actions of the authority or third party are not compatible and the reasons for reaching that conclusion”; and
 - (c) omit subsection (5).
7. In section 53(1)(a), for “(6)(b)” substitute “(6)(a)”.
8. In section 55(1), for the words after “in respect of” substitute “action which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”.
9. In Schedule 3—
- (a) for paragraph 1(1), substitute—
 - “(1) If a sheriff is satisfied by evidence on oath supplied by the Commissioner that there are reasonable grounds for suspecting that a Scottish public authority or a third party—
 - (a) has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations;
 - (b) has failed or is failing to comply with so much of a decision notice as requires steps to be taken; or
 - (c) has failed or is failing to comply with an information notice or an enforcement notice,and that evidence of such actions or such a failure to comply is to be found on any premises specified as part of that evidence, the sheriff, subject to paragraph 2, may grant to the Commissioner such warrant as is mentioned in sub-paragraph (2).”; and
 - (b) in paragraph 7, for “which is exempt information by virtue of section 31(1)” substitute “to which public access may be limited under regulation 10(5)(a) of the 2009 Regulations on the ground that such access would adversely affect national security”.