

Draft Order laid before Parliament under section 82 of the Freedom of Information Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

FREEDOM OF INFORMATION

**The Freedom of Information (Time for
Compliance with Request) Regulations 2004**

Made - - - - *November 2004*
Coming into force - - *1st January 2005*

Whereas a draft of these Regulations has been approved by resolution of both Houses of Parliament in pursuance of section 82(2) of the Freedom of Information Act 2000(1);

Now, therefore, the Secretary of State, in exercise of the powers conferred(2) by section 10(4) and (5) of the Freedom of Information Act 2000, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Freedom of Information (Time for Compliance with Request) Regulations 2004 and come into force on 1st January 2005.

Interpretation

2. In these Regulations, “the Act” means the Freedom of Information Act 2000.

Governing body of a maintained school or maintained nursery school and schools maintained by the Secretary of State for Defence

3.—(1) This regulation applies—

(a) to a request for information that is received by the governing body of a maintained school or a maintained nursery school(3); and

(1) 2000 c. 36.

(2) The functions of the Secretary of State under section 75 were transferred to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001 (S.I.2001/3500), which Order amended section 75 accordingly. The functions of the Lord Chancellor under section 75 as amended were transferred back to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), which Order amended section 75 accordingly.

(3) Section 215(1) of, and paragraph 127 of Schedule 21 to, the Education Act 2002 (c. 32) substitutes a new paragraph 52 in Schedule 1 to the Freedom of Information Act 2000 (“the Act”), adding the governing body of a maintained school as defined by section 20(7) of the School Standards and Framework Act 1998 (c. 31) and the governing body of a maintained nursery school as defined by section 22(9) of that Act to the list of public authorities in the Act.

- (b) to a request for information that is held by the public authority only by virtue of the information being situated in a school which is maintained by the Secretary of State for Defence and which provides primary or secondary education (or both primary and secondary education).

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to either—

- (a) the twentieth working day following the date of receipt, disregarding any working day which, in relation to the school referred to in paragraph (1), is not a school day, or
- (b) the sixtieth working day following the date of receipt,

whichever occurs first.

(3) “School day”, for the purposes of this regulation, means any day on which, at the school referred to in paragraph (1) above, there is a session.

Archives

4.—(1) This regulation applies where—

- (a) a request for information is received by an appropriate records authority or by a person at a place of deposit appointed under section 4(1) of the Public Records Act 1958(4); and
- (b) the request relates wholly or partly to information—
 - (i) that may be contained in a transferred public records, and
 - (ii) that has not been designated as open information for the purposes of section 66 of the Act.

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to the thirtieth working day following the date of receipt.

Operations of armed forces of the Crown

5.—(1) This regulation applies, in relation to a request for information, where—

- (a) a public authority cannot comply with section 1(1) of the Act without obtaining information (whether or not recorded) from any individual (whether or not a member of the armed forces of the Crown) who is actively involved in an operation of the armed forces of the Crown, or in the preparations for such an operation, and
- (b) for that reason, the public authority would not be able to obtain the information within such time as to enable it to comply with the request within the time referred to in subsection 10(1) and (2) of the Act.

(2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not being later than the sixtieth working day following the date of receipt, as the Information Commissioner may specify in accordance with paragraph (3) below.

(3) Where—

- (a) the public authority applies to the Information Commissioner for specification of a day in accordance with this regulation, and
- (b) that application is made within twenty working days following the date of receipt of the request,

(4) 1958 c. 51.

the Information Commissioner shall specify such day as he considers reasonable in all the circumstances.

Information held outside the United Kingdom

- 6.—(1) This regulation applies to a request for information which—
- (a) may
 - (i) relate to information not held in the United Kingdom, or
 - (ii) require information (including information held by a person who is not a public authority) that is not held in the United Kingdom to be obtained in order to comply with it, and
 - (b) for that reason, the public authority would not be able to obtain the information within such time as to enable it to comply with the request within the time referred to in subsections (1) and (2) of section 10 of the Act.
- (2) Where this regulation applies, subsections (1) and (2) of section 10 of the Act have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not being later than the sixtieth working day following the date of receipt, as the Information Commissioner may specify in accordance with paragraph (3) below.
- (3) Where—
- (a) the public authority applies to the Information Commissioner for specification of a day in accordance with this regulation, and
 - (b) that application is made within twenty working days following the date of receipt of the request,

the Information Commissioner shall specify such day as he considers reasonable in all the circumstances.

Signatory text

Date

Parliamentary Under Secretary of State,
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

The Freedom of Information Act 2000 (“the Act”) provides for the right to make a request for information to a public authority and entitles a person (“the applicant”) making such a request: (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him (section 1(1)).

Section 10(1) of the Act requires a public authority to comply with a request promptly, and in any event, not later than twenty working days following the date of receipt. Where the authority gives the applicant a fees notice, the working days in the period beginning with the day on which the fees notice is given the applicant and ending with the day on which the fee is received by the authority are to be disregarded for the purpose of calculating the twentieth working day following the date of receipt referred to in section 10(1) (section 10(2)).

These Regulations are made under section 10(4) of the Act. They allow public authorities a longer maximum period of time than is provided under section 10(1) to comply with section 1(1) of the Act, provided that this longer period expires on a date not later than the sixtieth working day following the receipt of the request for information and subject to the obligation on the public authority to comply “promptly”.

Regulation 3 provides that where a request for information is received by the governing body of a maintained school or maintained nursery school, or relates to information that is situated in a school maintained by the Secretary of State for Defence, for the purposes of section 10(1) or (2) working days which are not school days are not to be taken into account in calculating the twentieth working day following the date of receipt. The public authority must comply with the request within twenty working days of the date of receipt, disregarding any working day which, in relation to the school, is not a school day, or within sixty working days following the date of receipt, whichever is the sooner.

The governing body of a maintained school or maintained nursery school is a public authority, as defined in section 3 of the Act. A body can be a public authority either by: 1) being listed in Schedule 1 to the Act; 2) being designated by order under section 5 of the Act; or 3) being a publicly-owned company as defined by section 6 of the Act. The governing body of a maintained school or maintained nursery school is listed at paragraph 52 in Part IV of Schedule 1 to the Act, as substituted by section 215 of, and paragraph 127 of Schedule 21 to, the Education Act 2002.

Regulation 4 allows appropriate records authorities and places of deposit appointed under section 4(1) of the Public Records Act 1958 up to thirty working days from the date of receipt to comply with a request for information, where the information requested relates to information held in a transferred public record that has not been designated as open information for the purposes of section 66 of the Act. “Transferred public record” is defined in section 15(4) of the Act, and means a public record which has been transferred to either the National Archives (formerly the Public Record Office), a place of deposit appointed by the Lord Chancellor under the Public Records Act 1958 (“the 1958 Act”), or to the Public Record Office of Northern Ireland. “Appropriate records authority” is defined in section 15(5) of the Act and, in relation to a transferred public record, means; the National Archives, in relation to a record transferred to the National Archives; the Lord Chancellor, in relation to a record transferred to a place of deposit appointed by the Lord Chancellor under the 1958 Act and; the Public Record Office of Northern Ireland, in relation to a record transferred to that Office.

Regulation 5 provides that the Information Commissioner may exercise his discretion where a public authority cannot comply with the request within the time period referred to in section 10(1) or

(2) because the information to which it relates needs to be obtained from an individual who is actively involved in an operation of the armed forces of the Crown, or in the preparations for such an operation, and allow the public authority to comply with the request by some later specified date, not being later than the sixtieth working day following the receipt of the request.

Regulation 6 provides that the Information Commissioner may exercise his discretion where a public authority cannot comply with the request within the time period referred to in section 10(1) or (2) because the information to which it relates may not be present in the United Kingdom or may require information not present in the United Kingdom in order to comply with it, and allow the public authority to comply with the request by some later specified date, not being later than the sixtieth working day following the receipt of the request.

Under both regulations 5 and 6, the public authority must apply to the Information Commissioner to exercise this discretion within twenty working days following the date of receipt of the request.