

**EXPLANATORY MEMORANDUM TO THE  
FREEDOM OF INFORMATION (TIME FOR COMPLIANCE WITH REQUEST)  
REGULATIONS 2004**

**2004 No. [ ]**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee of Statutory Instruments.

**2. Description**

2.1 Public authorities usually have 20 working days within which to reply to requests made under the Freedom of Information Act 2000. These regulations extend the time period within which public authorities must respond to a request made under the Freedom of Information Act. They will apply in limited circumstances (as defined in the regulations), where there are clear practical reasons why the usual time limits could not be met.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative background**

4.1 Section 10(1) of the Freedom of Information Act 2000 requires public authorities to respond to a written request for information promptly, and in any event, not later than 20 working days from date of receipt. Section 10(4) of the Act allows the Secretary of State to make regulations to extend this time period within which requests must be answered to up to 60 working days, although requests should still be answered as promptly as possible. Section 10(5) allows that regulations made under section 10(4) may prescribe different days in different cases, and / or confer a discretion on the Information Commissioner to extend the time limit within which requests must be answered.

4.2 This order will not affect the majority of requests made under the Freedom of Information Act. However, it is being made to accommodate those situations where there are strong practical reasons why the public authority would not be able to comply with the time limit of 20 working days.

4.3 This is the first order to be made under section 10(4) of the Freedom of Information Act.

**5. Extent**

5.1 The Regulations apply to all of the United Kingdom.

**6. European Convention on Human Rights**

6.1 Baroness Ashton has made the following statement regarding Human Rights: "In my view, the provisions of the Freedom of Information (Time for Compliance with Request) Regulations 2004 are compatible with the Convention rights."

## 7. Policy background

7.1 The Freedom of Information Act 2000 provides for the right to make a request for information to a public authority. It entitles a person 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)).

7.2 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 to 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 (section 10(2)).

7.3 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”.

### 7.4 Schools

Governing bodies of maintained schools or maintained nursery schools, or schools maintained by the Secretary of State for Defence, will not have to count any working day that is not a school day towards the period of 20 working days within which they have to answer requests, provided that the request is answered within 60 working days.

### 7.5 Archives

Archive services – here defined as an appropriate records authority as defined by section 15(5) of the Freedom of Information Act or a place of deposit appointed under section 4(1) of the Public Records Act 1958 – will have 30 working days to answer requests for information when the following two conditions are met:

- the information may be contained in a transferred public record; and
- the information has not been designated as open information for the purposes of section 66 of the Freedom of Information Act.

### 7.6 Discretion for the Information Commissioner to allow a longer period for answering requests

These regulations will allow the Information Commissioner to exercise discretion to extend the time limits to 60 working days in the following cases:

- if a public authority cannot comply with the time limits because it needs to obtain information from any individual who is actively involved in an operation of the armed forces of the Crown or preparations for such an operation; or
- if a public authority cannot comply with the time limits because it needs to obtain information from abroad.

In such cases, the public authority would have to apply to the Information Commissioner within 20 working days of receiving the request. The Information Commissioner would specify a date by which the public authority must reply.

7.7 Prior to making these regulations, the Department for Constitutional Affairs consulted with 20 other government departments about whether extensions to the time limits would be needed for either their own department or other public authorities for which they had policy responsibility. 15 departments did not reply or submitted a nil return. Of the five departments submitting a request for an extension (on their own or others' behalf), these were only approved when there were strong and practical reasons why it might be impossible to comply with the usual time limits.

7.8 The Regulations will come into force on 1 January 2005.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact of these regulations on public authorities that have to respond to requests made under the Freedom of Information Act 2000 will be minimal, save in the circumstances outlined above. In these cases, it will assist the public authorities to answer requests where they would not have been able to meet the usual time limit of 20 working days for practical and operational reasons. The Information Commissioner has reported that use of the discretionary powers will increase his workload where he has to consider requests to extend the time limits.

## **9. Contact**

Fiona Mongredien, in Information Rights Division, Department for Constitutional Affairs can answer any queries relating to the instrument. Tel 020 7210 8071, email [fiona.mongredien@dca.gsi.gov.uk](mailto:fiona.mongredien@dca.gsi.gov.uk)