

EXPLANATORY MEMORANDUM TO
THE FREEDOM OF INFORMATION (ADDITIONAL PUBLIC AUTHORITIES)
ORDER 2018

2018 No. 173

AND

THE FREEDOM OF INFORMATION (REMOVAL OF REFERENCES TO PUBLIC
AUTHORITIES) ORDER 2018

2018 No. 185

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Freedom of Information (Additional Public Authorities) Order 2018 (“the Adding Order”) adds a number of bodies and officer holders to Part 6 of Schedule 1 to the Freedom of Information Act 2000 (“the Act”). Bodies and office holders listed in Schedule 1 to the Act are considered to be public authorities for the purposes of the Act and as a result each body and office holder will be required to make information available to the public in accordance with the Act.
- 2.2 The Freedom of Information (Removal of References to Public Authorities) Order 2018 (“the Removing Order”) removes references to public authorities from Part 6 and Part 7 of Schedule 1 to the Act. On the date the Order enters into force those authorities will either have ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and (3) of the Act which set out the criteria for inclusion within Schedule 1 to the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As the Adding Order is subject to negative resolution procedure, and has not been prayed against, and the Removing Order is not subject to further parliamentary procedure once laid, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 4(1) of the Act allows the Minister for the Cabinet Office or the Secretary of State to amend Schedule 1, and bring within scope of the Act, a body or office holder who meets the following conditions, set out in section 4(2) and 4(3):

- 4.1.1 that the body or office is established by Her Majesty’s prerogative, enactment or subordinate legislation, or by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government; and
 - 4.1.2 that in the case of a body, it is wholly or partly constituted by appointment made by the Crown, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government.
- 4.2 The purpose of an order under section 4(1) of the Act is to add newly created bodies or offices, or public bodies or offices which had not previously been added, to the list of “public authorities” to whom the Act applies.
- 4.3 The bodies and office holders to be added to Schedule 1 by the Adding Order each meet the conditions set out in section 4(2) and (3) of the Act. This is the ninth order made under section 4(1) of the Act.
- 4.4 Section 4(5) of the Act provides that the Minister for the Cabinet Office or the Secretary of State may remove from Schedule 1 a reference to any body or office holder that has:
- 4.4.1 ceased to exist, or
 - 4.4.2 ceased to satisfy either the first or the second condition for inclusion in an order under section 4(1) of the Act.
- 4.5 The purpose of an order under section 4(5) of the Act is to remove references to bodies that have ceased to exist or ceased to satisfy the first or second condition set out in section 4(2) and (3). The Removing Order is the sixth order made under section 4(5) of the Act.

5. Extent and Territorial Application

- 5.1 The extent of these instruments is the United Kingdom.
- 5.2 The territorial application of these instruments is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for the Constitution, Chloe Smith, has made the following statement regarding Human Rights:

“In my view the provisions of the Freedom of Information (Additional Public Authorities) Order 2018 and the Freedom of Information (Removal of References to Public Authorities) Order 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The Government regards the Act as a fundamental part of the UK’s approach to transparency. Transparency in public administration is necessary to maintain public trust and confidence, and drives improvements by holding bodies and offices bound by the Act to account. In order for the Act to fulfil these aims, regular updates of Schedule 1 are required to ensure that the Act extends to those bodies that should be covered because they meet the relevant statutory criteria. For clarity and accuracy,

regular updates are also required to Schedule 1 to remove bodies that have ceased to exist, have changed their names or no longer meet the statutory criteria for being bound by the Act.

- 7.2 The Adding Order adds fifteen bodies to the list of public authorities in Schedule 1 to the Act. The bodies being added include a number of bodies that have been set up since the last order under section 4(1) was made. It also adds entries corresponding to those removed by the Removing Order where a body's name has changed. The Act will apply to these bodies from the date the Adding Order comes into force on 1st May 2018.
- 7.3 The Removing Order removes nineteen public bodies from the scope of the Act. Five of the bodies and offices continue to exist either under a different name, or as a different type of organisation. The four whose names have changed are being added to Schedule 1 under their respective new names by the Adding Order. The final body of these five has ceased to meet the statutory criteria for a public authority under sections 4(2) and 4(3) of the Act and is therefore being removed from the scope of the Act. The remaining 14 bodies have all ceased to exist. It is therefore appropriate to remove them from Schedule 1 to ensure that the list of public authorities is accurate.

Consolidation

- 7.4 Consolidation does not apply to these Orders.

8. Consultation outcome

- 8.1 In accordance with section 4(7)(a) of the Act, the Welsh Ministers were consulted in respect of those bodies and offices added to Schedule 1 to the Act by the Adding Order whose functions are exercisable only or mainly in or as regards Wales. The First Minister confirmed that the Welsh Ministers were content on 8 February 2018.

9. Guidance

- 9.1 There is no associated guidance.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is not expected to be significant. The 'Investigative study to inform the FOIA (2000) post-legislative review – cost exercise' by IPSOS MORI for the Ministry of Justice, published in March 2012, estimated that the average cost for central government of handling a request for information was £184 in staff time, and for public authorities in the wider public sector they estimated the average to be £164. There is no obligation for public authorities to comply with vexatious requests or those that exceed the costs threshold determined by the Minister for the Cabinet Office or the Secretary of State. Costs for disbursements can be recovered. It is unlikely the volume of requests received by the bodies being added to Schedule 1 to the Act will result in significant new costs.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 No specific monitoring and review arrangements are needed. The Information Commissioner is the independent regulator for the Act.

13. Contact

- 13.1 Julianne Peterson at the Cabinet Office (telephone: 0207 276 1588 or email: Julianne.peterson@cabinetoffice.gov.uk) can answer any queries regarding the instrument.