

Freedom of Information (Amendment) (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 14-EN. A Policy Memorandum is printed separately as SP Bill 14-PM.

**Freedom of Information (Amendment)
(Scotland) Bill**
[AS INTRODUCED]

An Act of the Scottish Parliament to amend provisions of the Freedom of Information (Scotland) Act 2002 relating to the effect of various exemptions and the time limit for certain proceedings.

Amendments

1 Royal exemption

- 5 (1) Section 2 (effect of exemptions) of the FOI Act is amended as follows.
- (2) In subsection (2)—
- (a) the word “and” immediately preceding paragraph (e) is repealed,
 - (b) after paragraph (e) there is inserted “; and
 - (f) section 41(a) so far as relating to communications with—
- 10 (i) Her Majesty,
- (ii) the heir to, or the person who is for the time being second in line of succession to, the Throne, or
 - (iii) a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne.”.
- 15 (3) After subsection (2) there is inserted—
- “(3) For the purposes of subsection (2)(f), communications made or received on behalf of a particular member of the Royal Family are to be regarded as communications with that member.”.

2 Refusal notice

20 In section 18 (further provision as respects responses to request) of the FOI Act, in subsection (1), after the words “sections 28 to 35,” there is inserted “38,”.

3 Accessible information

In section 25 (information otherwise accessible) of the FOI Act, for subsection (3) there is substituted—

“(3) For the purposes of subsection (1), information is to be taken to be reasonably obtainable if—

(a) it is available—

(i) on request from the Scottish public authority which holds it, and

(ii) in accordance with the authority’s publication scheme, and

(b) any associated payment required by the authority is specified in or determined under the scheme.”.

4 Historical periods

In section 59 (power to vary periods mentioned in sections 57 and 58) of the FOI Act, after subsection (1) there is inserted—

“(1A) An order under subsection (1) may make different provision for—

(a) records of different descriptions,

(b) exemptions of different kinds,

(c) different purposes in other respects.”.

5 Time limit for proceedings

After section 65 of the FOI Act there is inserted—

“65A Time limit for proceedings

(1) Proceedings for an offence under section 65(1) may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor’s knowledge.

(2) No such proceedings may be commenced more than 3 years—

(a) after the commission of the offence, or

(b) in the case of a continuous contravention, after the last date on which the offence was committed.

(3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.

(4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in subsection (1) came to the prosecutor’s knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).

(5) Section 136(3) of Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it does for those of that section.”.

General

6 References to the FOI Act

In this Act, “the FOI Act” means the Freedom of Information (Scotland) Act 2002.

7 Commencement

- (1) Section 6, this section and section 8 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may include transitional, transitory or saving provision.

8 Short title

The short title of this Act is the Freedom of Information (Amendment) (Scotland) Act 2012.

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An Act of the Scottish Parliament to amend provisions of the Freedom of Information (Scotland) Act 2002 relating to the effect of various exemptions and the time limit for certain proceedings.

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