

# **FREEDOM OF INFORMATION (AMENDMENT) (SCOTLAND) BILL**

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## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

### **Purpose**

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration, of the Freedom of Information (Amendment) (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.
2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### **PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2**

#### **Section 4 – historical periods**

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by statutory instrument  
**Parliamentary procedure:** affirmative procedure

3. Section 4 (as introduced) enhances the existing order-making power in section 59(1) of the Freedom of Information (Scotland) Act 2002 ('the 2002 Act') by enabling the Scottish Ministers to make different provision for records of different purposes, exemptions of different kinds, or different purposes in other respects.
4. Section 4 was amended at Stage 2. Section 4 now adds a new power to section 59 of the 2002 Act to allow for modification, by order, of the meaning of 'historical record'. In particular, the new power allows for a record to become 'historical' after a specified period (not exceeding 30 years) beginning with the date on which the record is created or a particular date in the calendar year following that date (in line with the existing power in section 59(1)), though particular provision is made in relation to communications with the Royal Family.
5. In addition, specific to section 41(a) of the 2002 Act (concerning communications with the Royal Family), the power allows for a record to become 'historical' after a specified period

(not exceeding 30 years) beginning with the occurrence of an event apart from the creation of the record.

6. This replaces the existing power in section 59(1) of the 2002 Act to modify section 57(1). As with the existing power, the new power is subject to the affirmative procedure.

7. Section 4 (as amended) also amends section 59(2) to enable an order under section 59(1) or the new section 59(1ZA) to make supplemental, incidental, consequential or transitory provision, in addition to transitional and saving provision.

#### *Reason for taking power*

8. The purpose of section 4 of the Bill is to provide enhanced, more flexible order-making powers primarily so that the meaning of ‘historical record’ and the lifespan of ‘30-year’ exemptions can be adjusted on an exemption-by-exemption basis.

9. Section 4 was amended at Stage 2 to ensure that the Scottish Ministers have sufficient powers to make orders containing provision for specified periods for different types of records in different cases, particularly in relation to the lifespan of exemptions under section 41(a) of the 2002 Act. This exemption is specifically identified in the amending provision.

10. The existing section 59(1) order-making power enables substitutions to be made about the number of years in the meaning of ‘historical record’ and that number cannot exceed 30 years. The new power also enables modification of the rules for what constitutes an ‘historical record’ with reference to specified time periods (though no specified time period can exceed 30 years).

11. In addition to a specified period beginning with the date on which a record is created, or a particular date in the calendar year following that date, in respect of section 41(a) a specified period can begin with the occurrence of an event other than the creation of a record, for example, the death of the relevant member of the Royal Family.

12. Section 4 is also amended to modify section 59(2) of the 2002 Act so as to allow an order under section 59(1) or (1ZA) to make the full range of ancillary provision. This is to ensure the smooth transition from one set of rules to another.

#### *Choice of procedure*

13. An order made under this power will be subject to the affirmative procedure in line with the procedure for orders under section 59(1), in order that the Parliament may be given the opportunity to consider any issues arising from modifying the definition of ‘historical record’.



*This document relates to the Freedom of Information (Amendment) (Scotland) Bill as amended  
at Stage 2 (SP Bill 14A)*

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