

Protection of Freedoms Bill

Fact Sheet – Part 6: Freedom of Information and Data Protection

Part 6 contains a number of amendments to the Freedom of Information Act 2000 (“FOIA”) and Data Protection Act 1998 (“DPA”). In summary, Part 6 amends the FOIA to place a new requirement on public authorities to make datasets available for re-use in a re-usable format, the extension of the FOIA to additional organisations, and the extension of the Freedom of Information provisions in the Constitutional Reform and Governance Act 2010 (“CRGA”) to Northern Ireland bodies. It also amends the DPA and the FOIA to enhance the independence of the Information Commissioner.

Publication of certain datasets

The Coalition’s Programme for Government included a commitment to “*create a new ‘right to data’ so that government-held datasets can be requested and used by the public and then published on a regular basis*”, and “*to ensure that all data published by public bodies is published in an open and standardised format, so that it can be used easily and with minimal cost by third parties*”.

The FOIA currently provides for access to information held by public authorities. It makes no express provision in respect of datasets, their availability for re-use or their publication in a re-useable format. Clause 98 provides for public authorities to make datasets available for re-use and, where reasonably practicable, in a re-usable format when releasing them in response to requests or through publication schemes. The greater availability for re-use of public information could also be useful for the private sector, allowing for the development of computer applications based on raw, reusable, machine readable data.

Meaning of “publicly-owned company”

The Programme for Government states that the Government will extend “*the scope of the FOIA to provide greater transparency*”.

Section 6 of the FOIA currently extends the Act to companies wholly owned by the Crown or a single public authority. Clause 99 amends section 6 to widen the definition of a “publicly-owned company” with the effect that the FOIA is extended to companies wholly owned by the wider public sector. This will bring companies wholly owned by any combination of public authorities subject to the FOIA, with limited exceptions, within its scope. As a result of this provision the FOIA will be extended, for example, to waste disposal companies and purchasing organisations owned by more than one local authority.

In addition, the Government separately proposes to use powers in the FOIA to extend the Act to a number of other organisations, including the Association of Chief Police Officers, the Financial Ombudsman Service, and the Universities and Colleges Admissions Service.

Extension of certain provisions to Northern Ireland bodies

Section 80A of the FOIA excludes Northern Ireland bodies from amendments to the FOIA provided for in the CRGA. The CRGA provided that the maximum duration of some FOIA exemptions be reduced from 30 years to 20 years, and also that enhanced protection be afforded to information relating to communications with the Royal Family and Household. Clause 100 repeals section 80A of the FOIA thereby extending these provisions to Northern Ireland bodies.

The Information Commissioner

The Information Commissioner is already independent of Government in the regulatory decisions he makes. However, the Government is taking steps to further enhance the day-to-day corporate and administrative independence of the Commissioner, some of which require amendments to the DPA and FOIA. Other changes will be facilitated by a strengthened role for Parliament in the appointment of the next Commissioner, and a new Framework Document outlining the day-to-day relationship between the Information Commissioner and Government.

Clause 101 alters the provisions in respect of the tenure and appointment of the Commissioner, in particular to provide that he or she may only serve a single term of up to seven years. The provisions in this Part also remove current requirements for the Commissioner to obtain the Secretary of State's consent to issue certain codes of practice, to charge for the provision of certain services, and in relation to certain staffing matters.

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